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Residential Tenancies Act review
Laying the Groundwork

This submission is a response by Housing for the Aged Action Group (**HAAG**) to the 'Laying the Groundwork' consultation paper discussing the review of the Residential Tenancies Act (**RTA**).

HAAG would like to acknowledge that the submission was compiled with contribution from our members and that this forms the foundation of our response.

The Changing Housing Context

1. Does the current Act enable and encourage a rental market that provides sustainable, secure and safe housing to Victorians? Why or why not?

Fundamental housing needs of older people

HAAG's key proposition for the review of the RTA is that the current legislation is totally unsuitable for the housing needs of older people in the private rental market. The key aspects of sustainability, security and safety that are crucial foundations for ageing-in-place are substantially unavailable in housing that is regulated by the RTA.

Professor Andrew Jones has stated that there are some non-negotiable benchmarks of need for older people and housing: "The core housing attributes valued by older people include autonomy, security, social connectivity, amenity, adaptability, and affordability. These values provide a generic set of criteria for assessing the suitability of housing arrangements and designs."[1] HAAG often uses

these principles to assess the suitability of a range of housing options for older people. The private rental market fundamentally fails this test in almost all the above aspects.

The importance of legislative reform must also be viewed in the context that the quality and condition of housing are fundamental health and safety issues for older people that can determine personal wellbeing and ability to live independently. Housing that is not suitable as a person ages can cause severe poverty, social isolation, chronic illness, hospitalisation and premature entry to residential aged care accommodation. A number of clients from HAAG's Home at Last (**HAL**) service have even stated that the pressures of housing poverty caused by lack of affordability, poor quality accommodation, insecurity and fear of eviction have caused them to contemplate suicide as they see their housing being a major contributing factor to a bleak personal future.

Clear evidence of the lack of sustainability, security and safety in private rental housing is also demonstrated by the key reasons that older people contact HAAG's Home at Last service for older people who are at risk of homelessness. These include notices to vacate (27%), affordability (21%) and unsuitability of housing condition or design (30%). This demonstrates the current private rental housing laws expose older people to a significant risk of homelessness.

Therefore, regulation of the private rental market to provide a more sustainable, secure and safe living environment for older Victorians is a critical need that must be addressed in this review.

Residential Parks and Villages

Sustainable, secure and safe housing is also a major concern that needs to be addressed for residents living in residential parks and villages, particularly older people living in retiree communities. There is wide disparity across the industry in terms of secure tenure with some villages offering 99 year leases, others offering no tenure at all and some with wide variations within each village. As this is an industry that promotes this form of housing to retirees, it is HAAG's strong belief that the law should offer 50-year minimum-term leases that therefore provide the protection for a retired person's life-span. Many residents invest their life savings in their retirement home and if they do not have secure tenure they are often living in fear of, or with misplaced trust in, the park and village operator. Lack of legislative protection leaves open the prospect of a major disaster occurring if a village owner decided to close their village and sell or convert the land into another commercial enterprise.

Changing housing landscape requires changes to tenancy laws

The importance of improving regulation of the private rental market to provide sustainable, secure and safe housing is particularly needed at this time because of significant changes that are occurring in the overall housing environment. In the past private rental housing had the advantage for tenants as being a short term option on the road to future long term housing. Depending on a person's financial means and personal circumstances, the main long-term, secure, and affordable options have been home ownership on one hand, or public housing on the other. Because of the greater availability of these housing options in the past there has been less need to regulate the private market due to its transitory role in a typical person's housing career.

However, home ownership and public housing have been in steady decline while there has been significant growth in private rental housing. Long term trends show that the proportion of households that own their home outright has fallen from almost 42 per cent in the mid-1990s to 30.9 per cent in 2011-12 with overall home ownership rates dropping from 71% to 67% over that period. The share of renters has risen by 5% over the period to now represent 30% of all households[2]. The increase in renters has been in private rather than public housing with expenditure on public housing declining nationwide by $51 million in real terms from 2000-01 to 2012-13[3]. There are now 34,464 applicants on the public housing waiting list in Victoria.[4]

Within these overall figures there has also been a dramatic shift in the housing profile of older people. In the past 5 years alone ABS data shows that the proportion of home-owners over 55 years of age has declined by 3% from 63.8% to 60.5% while 3% more retirees have home mortgages (14.5% to 17.7%). In contrast, there has been a 2% increase in the proportion of older people living in the private rental market from 8.6% in 2006 to 10.8% in 2011.[5]

This rapidly emerging group of older people are at risk of homelessness due to factors such as economic disadvantage, life events such as illness and divorce, and a lack of savings. The majority are women who have historically been paid less than men, have spent more time out of paid work raising families, and consequently have lower levels of savings including superannuation.

The problem with the Residential Tenancies Act

The private rental market is unsuitable for older people once they reach retirement as there are significant negative effects caused by short-term leases, high rents, a lack of minimum housing standards, and difficulty obtaining home modifications.
Overall, private rental housing fails the test of housing need for older people in four main ways:

- Lack of secure tenure with leases set at 6-12 months;
- Lack of affordability as rents are not manageable on the aged pension (average one bedroom flat in Melbourne suburbs costs 63% of age pension including all supplementary income such as rent assistance);
- Poor housing quality for low cost rentals with no minimum housing conditions provided in law;
- Unadaptable as people age with landlord permission required for basic aids such as ramps and handrails

These matters are addressed in greater detail below.

2(a) What issues would you like examined in the Review of the current Act?

HAAG believes there are six major issues that should be examined in this review in relation to residential tenancies: security of tenure, rental affordability, minimum standards, housing modifications, privacy, and outdated provisions.

We discuss the relevance of these issues as well as other specific concerns in relation to caravan and residential parks and other older-person-specific forms of rental housing separately, below.

Security of tenure

Lack of secure tenure is the single biggest problem facing older tenants in particular, but also Victorian tenants in general. Ultimately, security of tenure encompasses all of the other issues we raise here and is not separable from effective rent controls, adaptability and minimum standards, etc. More specifically, the current Act fails in two key ways to provide reasonable security of tenure:

1) There is no mandatory minimum term for tenancy agreements. Although there is a maximum term (of five years) this is irrelevant in practice because landlords consistently use their superior bargaining power to keep tenancy agreements short (12 months or less) or periodic.

2) Landlords have very broad eviction powers; the presumption tends to be that a landlord should always be able to evict a tenant and need only provide a modest amount of notice to do so. Under the current Act, the only circumstances in which a landlord cannot evict a tenant is where they have no reason to do so except that the tenant has exercised their rights – and the burden will be on the tenant to prove this is the case. Even when the tenant has done nothing to breach the tenancy agreement, there are a wide range of circumstances in which a landlord can evict the tenant with only 60 days' notice. A landlord can also lawfully evict a tenant in retaliation for the exercise of that tenant's rights, so long as the landlord intends or convinces a tribunal they intend to substantially repair the property, or have a family member move in (for example).

Rental affordability

At present the Act does not set an upper limit on either rent or rent increases, instead allowing the landlord to increase the rent twice yearly so long as the new rent does not exceed a fair market level. Market rent may, and often does, increase faster than the Consumer Price Index (**CPI**) or average wages and imposes particularly intense burdens on tenants who are reliant on income support, such as aged pensioners. Where there is a dispute, fair market rent is assessed by Consumer Affairs Victoria (**CAV**) inspectors who rely on information provided by

local real estate agents, i.e., people acting in the interests of landlords. If this isn't a situation of foxes guarding the hen house, it's pretty close.

Modifications

The current Act includes a duty provision requiring tenants to obtain the landlord's consent before installing fixtures or making alterations, renovations or additions to the rented premises. There is no obligation on the landlord to consent to reasonable requests, and there is no recourse for a tenant when consent is refused. This rule extends from major modifications through fairly minor disability access issues (installation of rails, etc.) to trivial cosmetic changes like putting holes in the walls for picture hooks. The Equal Opportunity Act does provide some recourse for tenants who require alterations due to a disability, but in our view the RTA itself should provide greater rights for tenants seeking modifications.

Minimum housing standards

Since March 2013, the Act has prescribed a set of minimum standards for rooming houses but does not provide any such standards for residential tenancies. Even provisions that gesture in this direction are totally non-functional, as with section 69, which requires a 'prescribed level' for certain appliances; this level has never been prescribed. Low-income tenants often have little choice but to accept substandard accommodation that can include squalid conditions and outdated appliances that lead to unreasonably high utility bills.

Privacy

The current Act allows landlords to enter rented premises for a wide variety of reasons with just 24 hours' notice. It is by no means obvious why landlords should require such ready access for matters that can easily be scheduled further in advance, such as routine inspections or property evaluations. Routine inspections are allowed every six months which, while arguably justified in a context of short-term tenancies, tends to become onerous.

Outdated provisions

A number of provisions of the current Act have simply become outdated since 1997. In particular, sections 31, 34, and 40 limit landlords to accepting one bond of no more than one month's rent, and only requesting rent be paid one month in advance. However, these limits only apply though where "the amount of rent payable under a tenancy agreement for 1 week exceeds $350". These limits have not been increased since 1997, even though median rents have increased sharply over that time to the point that there is no longer any maximum bond, maximum number of bonds, or maximum amount of rent in advance for most metropolitan tenancies. This is plainly contrary to the intention of these sections. In the June

quarter of 1997 the median rent for a three-bedroom house in Melbourne was just $171.[6] According to the most recent DHHS rental report, median rent in Melbourne for all properties is now $370.[7]

Another notably outdated provision is section 237, which allows a tenant to give a reduced period of notice of intention to vacate in a variety of situations, including receiving an offer of public housing from the Director. The intent of this section is to avoid disadvantaging vulnerable tenants who have only a short time to accept offers of social housing when they become available. However, since 1997, an increasing proportion of social housing offers have been made by community housing organisations rather than the Director of Housing, and tenants who receive such offers remain liable to give a full 28 days' notice of intention to vacate.

2 (b) What are you preferred outcomes, and what evidence base is there to support them?

The evidence base on which HAAG relies in setting out our preferred outcome is drawn mainly from our 30-year history of working with and for older tenants. Our HAL service has operated since 2012 and acts as a one-stop-shop for older Victorians with a housing query or problem. During the 2014/15 financial year, HAL was contacted by 1147 older people seeking housing advice and assistance. Of these contacts, 71% were from people in forms of housing covered by the Residential Tenancies Act, primarily private rental (52%), public and social housing (12%) and rooming houses (6%). This experience and evidence base provides us with extensive information about the limitations and problems of the current Act, the ways it fails older tenants in particular, and the reforms needed to properly balance the rights of tenants and landlords.

<u>Security of tenure</u>

The Act should prescribe a minimum term of 10 years for tenancy agreements, and landlords' rights to evict tenants should be sharply curtailed with the abolition of no-reason notices to vacate, the extension of the amount of notice to vacate in situations where the tenant has not breached their tenancy agreement from 60 days to six months, and the extension of the prohibition on reletting properties after serving such notices to 24 months after the end of the tenancy.

The recent Senate report on Affordable Housing concluded that "Secure tenancy, affordable rents, and appropriate housing have a critical role in setting the foundations for a healthier and more productive population".[8] Hulse and Saugeres have discussed at length the range of ways lack of secure housing produces negative health and social effects among Australian tenants, including not only housing instability, but lack of privacy, safety, comfort and belonging, and health, financial, and employment insecurities.[9]

27% of HAL clients contact the service after receiving notices to vacate. The bulk of these are notices which do not allege a breach of the tenants' duties – in particular, no-reason notices and notices for sale or repair. Many tenants contacting the service who have not received notices to vacate report high levels of anxiety at the prospect that the landlord *could* serve such a notice – either at the end of a 12-month lease, if they have one, or at any time, if they have a periodic tenancy. This lack of security has a range of negative effects, including restricting tenants' capacity to plan for the future, and limiting their ability or willingness to assert their rights as tenants across a range of areas (i.e., challenging excessive rent increases, requesting repairs). Overwhelmingly these tenants are already under financial stress, with most reliant on aged or disability pensions or other income support, and the costs associated with moving are overwhelming if not simply impossible to meet.

Where HAL provides direct housing support to clients, we routinely tell them it will take at least 3-6 months to securely and appropriately rehouse them. We understand this is one of the faster turn-around times in the sector. In this context, 60-120 day notice periods from landlords' subject tenants to severe stress and risk of homelessness. There is no obvious reason why landlords who intend to sell, undertake substantial repair or renovations, or demolish their investment properties cannot plan this substantially in advance and so be expected to provide lengthier notice periods. There is no obvious reason why landlords should need to evict tenants for no reason – such provisions are inherently arbitrary and open to abuse. And prohibitions on the use of such notices in retaliation to the exercise of tenants' rights have tended not to function adequately.

Case study: HAAG was recently contacted by a number of tenants living in a cluster of ILUs owned by a faith-based non-profit. All were in their 70s or older and had expected their tenancies to last as long as they could live independently. The tenants had lived there for periods ranging from three to seventeen years. They have now received 60 days notice to vacate on the grounds that the landlord wishes to sell. There is no reasonable prospect that they will find suitable alternative housing in that time, and when they do, will face significant difficulties maintaining or re-establishing connections to support networks, healthcare providers and other services.

Case study: After renting a property from the same landlord for ten years, a 60-year-old woman received a notice of rent increase much higher than any previous increase. Surprised, she told the landlord she would challenge it. The next day the landlord sent her a notice to vacate for no reason. With HAL's assistance, she applied to VCAT for an order that the notice was not valid because it was given in response to the proposed exercise of her right to challenge an excessive rent increase. At the hearing, the landlord claimed they actually intended to sell but

wanted to offer the tenant more than the required 60 days for that reason – and that although they had not engaged a real estate agent for the sale, it was purely coincidental that they served the notice the day after she told them she would challenge the rent increase. The Tribunal decided the tenant had not proven her case, and consequently she was evicted.

Rental affordability

Rent increases should be restricted to no more than once in 12 months, with the presumption that rent increases not exceed CPI.

73% of rent-paying households who contact HAL pay 30% of their income or more in rent, which is the threshold widely recognised as constituting housing stress. 41% are paying more than half their income in rent and so experiencing severe housing stress. 21% of all HAL clients report housing affordability stress as the major reason they are contacting the service.

It is widely recognised that rents in metropolitan Melbourne have become unaffordable for low-income households, a problem that is more severe for older renters who are more likely to be both single and reliant on income support. In this context, allowing rents to be increased to market levels has been a boon to investors at the expense of low-income renters. The problem is less that landlords try to increase rent above market levels but more that market levels themselves are too high. Moreover, the regulatory system that is supposed to limit landlords to the market level is structurally inadequate. CAV inspectors do not independently assess market levels but ask local real estate agents, i.e., landlords' representatives. This is barely one step removed from allowing landlords to set any rent level they like.

Modifications

The tenant's duty not to modify the property without consent should be amended to specify that the landlord may not unreasonably withhold consent, and provision should be made for a tenant to apply to the Tribunal for an order that the landlord's consent is not required where it has been unreasonably withheld. A presumption should apply that it would be unreasonable for a landlord to withhold consent (a) where modifications are required for legitimate medical reasons, and (b) where modifications are minor, cosmetic, and easily restorable to their previous condition.

30% of clients contacted HAL primarily over concerns with inadequate or inappropriate dwelling conditions. While not all of these issues could have been resolved if tenants had been allowed to modify their rental properties, it gives some indication of the scale and importance of the problem. In Maree Petersen's research on first-time homelessness amongst older people, she found that "56 per

cent [of research subjects with conventional housing histories] were at risk of homelessness due to inaccessible rental accommodation"[10] and even where specialist ACHA workers negotiated on tenants' behalf, "on the whole landlords were not willing to modify accommodation".[11]

The capacity to make reasonable modifications to their homes is essential for older renters. Hulse and Saugeres found that 'private renting was usually unsuitable for people with mobility impairment who needed to have adaptations made to the property'[12] and older people are, of course, more likely to have mobility impairment. While traditionally this has been resolved through the provision of older persons public housing constructed to universal design standards, as the proportion of older tenants continues to increase the proportion of those renters who can access public housing will continue to decline. Residential tenancy laws will have to make private rental more adaptable for these tenants.

Case study: A 70-year-old man was diagnosed with motor-neurone disease and, with the help of an occupational therapist, wrote to his landlord to request consent to install safety rails at his own expense. The landlord signed a consent form but changed his mind and insisted the installation not proceed. Days later the tenant received 120 days' notice to vacate for no reason. Such notices are invalid when given in response to the exercise of a right under the Act, but it is not clear that there is any right under the RTA the tenant can be said to have exercised.

Minimum housing standards

HAL witnesses many situations where older tenants are living in poor quality and squalid housing conditions. In many cases these issues could be resolved using the repair processes of the current Act. However, there are also housing conditions that tenants cannot take action to remedy due to the lack of fundamental housing standards in legislation. The landlord's responsibility is to maintain the property as it is in good repair, but not necessarily to provide accommodation with reasonable standards and facilities at the beginning of a tenancy.

HAAG sees many older people who have housing without in-built heating and insulation, or with outdated heating facilities that run at a prohibitive cost in terms of utility bills. It is very concerning to visit tenants in this situation and find their home resembles an ice-box where the temperature inside can actually be colder than it is outside. The consequences are often manifested as severe illnesses, such as respiratory conditions, that can have dire ongoing health and wellbeing consequences for the elderly.

HAAG's view is that all properties offered for rental should be bound by certain contemporary minimum health and safety standards. This would include aspects such as heating, 5-star rated insulation, draught-proofing, adequate locks on doors

and windows, and appliances such as heaters and stoves that are of contemporary standard and quality.

Such minimum housing standards would be based upon a government determined benchmark that is a contemporary measure for all Victorian homes ensuring the occupant can maintain a suitable level of health without being negatively impacted by their living environment.

Privacy

Landlords should be required to provide at least 7 days written notice of entry and demonstrate attempts to negotiate suitable inspection times, where the grounds for entry do not allege any breach on the tenant's part, such as for general inspection and valuation. Entry for routine inspection should be limited to no more than once in 12 months. Where a landlord takes photographs or videos while exercising a right of entry, they should be required to notify the tenant in advance how such photographs or videos will be used, with provision for a tenant to seek an injunction from the Tribunal where they believe such use is unreasonable or would tend to endanger their safety or privacy.

These outcomes would overlap substantially with the recommendations made by the Victorian Law Reform Commission in its recent report "Photographing and filming tenants' possessions for advertising purposes".[13] While the Commission's focus was narrower than the broad concern for tenants' privacy we outline here, we concur with their conclusion that some landlord and real estate practices with respect to entering premises "have caused tenants distress and harm. The law has failed to keep pace with technology, including online advertising, the advent of which largely explains the prevalence of tenants' concerns about privacy, risk of theft and risk of personal harm".[14]

HAAG's experience has been that older tenants tend not only to have greater concerns around new technologies with respect to privacy, but greater concerns for their privacy in general. Older tenants consistently report that they find routine inspections intrusive and that they feel 'judged' by the (generally much younger) real estate agents who carry out inspections.

Case study: An elderly Home at Last client who is wheelchair bound receives notices of entry for routine inspection every six months, even though she has consistently maintained the rented premises in reasonable or better condition for the 10 years of her tenancy. On each occasion there is a (usually very young) property manager who uses an iPad to photograph every part of her flat, including personal medical equipment that she keeps in her bathroom. On one occasion they instructed her that she should not be using a small second room for her craft work as they deemed it a bedroom – an intrusion that probably breaches the duty to

provide quiet enjoyment, and which significantly distressed the tenant, but has no obvious remedy under the current Act. Although her mobility is poor, the tenant finds the process so demeaning that she arranges to be absent from her unit when the agency conducts inspection – and then worries they will further criticise her lifestyle.

Outdated provisions

The amount of weekly rent that excludes a tenancy from the maximum bond, maximum number of bonds, and limit on rent in advance should be an amount that can be prescribed (along the lines of the limit on the amount for which a tenant who has carried out urgent repairs may be reimbursed) so that it can be adjusted appropriately with changes in median rental prices.

Tenants' who have received offers of social housing, whether from the Director or from a non-profit organisation that receives funding from the Director, should be entitled to give a reduced period of notice of intention to vacate.

3(a) Are the principles and objectives underpinning the current Act relevant today? Why or why not?

The current objectives underlying the RTA, such as the promotion of a well-functioning rental market and the provision of an effective and efficient dispute resolution process remain relevant and important (leaving aside the question of whether the Act gives effect to these objectives).

However, the principle of ensuring a fair balance between the rights and responsibilities of landlords and tenants needs to be reconsidered in light of the re-composition of the rental market. This concept of balance tends to assume that rental housing is a commodity more or less like others, and the rights set to be balanced are conceived fundamentally as the rights of consumers and traders engaged in a transaction. As increasing numbers of Victorians find that rental housing is not a temporary option on a path to home ownership but the only form of housing available to them over the long-term, and as public housing waiting lists become even more prohibitive, this framework is increasingly inappropriate.

(b) Given current trends, what principles and objectives do you think will be important in regulating the rental sector in the future?

The rights of tenants that the Act seeks to balance against the interests of landlords should be conceived fundamentally in terms of the right to a home, rather than as consumer rights. The right to a home exceeds the simple right to housing; it reflects the value society places on the security, comfort, and privacy afforded by a place of one's own. The traditional housing settlement in Australia has seen the right to a home embodied in two key forms: on the one hand, home ownership, and on the other, for those not able to purchase their own homes, the life tenure of public housing. As both these forms of housing move out of reach for more and more people, a substantial part of the population will continue to live in houses that fall short of the ideal of home – unless the right to a home is made to underpin residential tenancies legislation.

5. What can Victoria learn from the approach to the regulation of residential tenancies in other Australian jurisdictions and internationally?

Numerous international jurisdictions provide greater security of tenure for tenants than Victoria.

The Senate Committee on Affordable Housing heard extensive evidence regarding superior protections offered to tenants overseas: "A number of witnesses referred to the stable rental markets in countries such as Germany. For example, Mr Pisarski noted that in some European countries, a tenancy can be entered into lasting over a decade or 20 years or more with 'really solid rights' within that agreement."[15]

To provide some specific examples, Germany's rental market, like Victoria's, is dominated by small individual investors and relies largely on periodic tenancy agreements, but "[e]xtensive legal specifications apply to termination by notice and there are relatively few ways that the landlord can exercise this right, ordinarily".[16] In Flanders, almost half of all tenancy agreements (45%) are for nine years, with provision for shorter contracts that are renewed to default to nine-year agreements to discourage landlords from simply rolling over short term agreements.[17]

In 2004, Ireland moved away from a system of short-term tenancy agreements similar to Victoria's by mandating four-year minimum terms. Notably '[t]here does not appear to have been any adverse impact on the supply of private rental housing: since the reforms were introduced in 2004 the Irish private rental sector has grown substantially as a proportion of all housing."[18]

6. What are the challenges and barriers to reform of the rental sector?

HAAG believes the fundamental challenge and barriers to reform is the will of government to take the initiative to respond to the changing rental housing landscape in Victoria. There are well-established facts, laid out in the Fairer, Safer Housing consultation paper, about the increasing numbers of people living long term in the private rental market due to the two key factors of lower levels of home ownership and lack of affordable housing supply. Private rental housing is no longer a transitory form of accommodation on the road to housing security.

Current trends suggest that private rental housing will be relied upon increasingly as a form of permanent accommodation. This trend is encouraged and supported in a range of ways by governments yet they have not provided the balance of legislation to ensure private rental housing is sustainable for tenants.

For example, over the past 20 years the Commonwealth Government has focused policy and expenditure on supporting tenants to live in the private rental market rather than capital construction of public housing. As the current Commonwealth Government Federation Issues Paper on Housing and Homelessness states that the total cost of Commonwealth Rent Assistance (**CRA**) to the Commonwealth is increasing at a rapid rate and is expected to total approximately $4.35 billion in 2014-15. Since 2008-09, expenditure on CRA has increased by around 33 per cent in real terms, from $2.97 billion in 2008-09 to $3.95 billion in 2013-14, while the number of CRA recipients has increased by 27 per cent, from 1.04 million in 2008-09 to 1.32 million in 2013-14… [A] reduction in public housing stock has meant that some people who may have previously been in public housing are in the community housing or private rental sector where they can receive CRA.[19]

The Victorian Government spends $12 million per year on assisting tenants to establish themselves in private rental accommodation through private rental brokerage schemes. This is a deliberate strategy to discourage Victorians from applying for public housing due to the lack of supply. Further, tenants are encouraged to move from public and social housing if they demonstrate 'self-reliance' traits such as finding stable employment. Also, the increased targeting of highest need applicants for priority into public housing leaves the vast majority of people on low incomes to face long waiting lists to enter public housing, or find a way to manage living in private rental accommodation.

It is therefore time for governments to modernise its approach to regulating the private rental market. However the greatest barrier in the face of compelling evidence and logic is vested political interests. The government must ensure that entrenched and powerful lobbyists from the housing industry do not frighten the state from taking these essential actions on modernising laws that govern the private rental market. The housing industry will argue that long term leases,

affordability controls and minimum housing standards will drive investors away from the sector. This proposition needs to be refuted on the grounds that the above benchmarks, if enshrined in legislation, will in fact increase the attractiveness of the private rental sector and potentially bring more people to live in such accommodation. The consultation paper provides compelling ABS data that shows the evidence to support change. However HAAG believes it would be beneficial, in order to avert such a scare campaign, if the government conducted independent research to determine the real impact of improved regulation on market changes. Such research could analyse the housing supply trends in European countries where regulation of the market has occurred without causing a market downturn.

Regulation of the private rental market would require the housing industry to be more sophisticated and strategic with its investment planning and also appreciate the responsibilities it has in providing accommodation to people, not just as short-term 'bricks and mortar' investment for capital gain. This should clearly be argued on the basis that investors are already deriving considerable taxpayer-subsidised benefits from the flow-on rental increases provided by government provision of rent assistance and tax profiting through negative gearing and discounts on capital gains tax. Although HAAG's policy is that negative gearing should be abolished, if it is to continue the Victorian Government should demand that the Commonwealth Government only allow negative gearing for investment in long term, affordable rental housing.

We would also argue that the current affordable housing trends are so dire for people on low incomes that the government has only one other option if it does not take significant steps to reform the private rental market – withdraw its direct and indirect subsiding of the housing market and invest in public housing expansion where the reform benchmarks of secure tenure, affordability, good housing standards and adaptable design are already offered by good government policy.

7. What considerations need to be given to the regulation of caravan parks and residential parks?

Caravan Parks

Caravan parks have traditionally provided affordable holiday accommodation, often also allowing for permanent residency in low numbers. Over time the industry has evolved to provide larger numbers of sites allocated for permanent residents, and in turn moveable dwellings have also evolved to reflect increased interest in this type of affordable housing, especially for retirees.

Currently residents living in caravan parks, whether they own their dwelling and live there permanently or rent permanently, are usually covered by Part 4 of the RTA. Dwellings that are owned are often more traditional, older dwellings such as a caravan that has been modified to include annexes. This form of housing tends to cater for those with lower incomes and lower asset levels, as the age and style of dwelling provided is priced more affordably to purchase.

Many caravan parks provide a mixture of sites for both permanent occupancy and holiday rentals at varying ratios. Some parks, such as those owned by larger companies, have started to move towards solely tourist accommodation or permanent occupancy. Parks in more lucrative locations have sold to developers, and as a result the land use has changed. This has impacted the landscape of this sector and many permanent residents significantly.

The trend to provide more upscale moveable dwellings has also resulted in parks trying to remove older dwellings to free up sites to build new and more expensive homes to sell.

In some circumstances the policies related to Crown land and the Department of Environment and Primary Industries (**DEPI**) has affected a residents' use of their dwelling and site and can cause problems if they decide to leave the park.

Some parks contain more modern moveable dwellings for sale that would be classified under Part 4A of the RTA. Part 4A matters will be addressed in a separate section.

According to a report published by the Australian Housing and Urban Research Institute (**AHURI**), "the issues and risks confronting all residents in caravan parks… include lack of security of tenure, inadequate housing standards, risk of homelessness, minimal access to community, health and education services and a lack of knowledge about, and lack of support in, asserting tenancy rights".[20]

HAAG has observed that over time these issues and risks have not changed and we consider some of them in more detail below. While many of these concerns parallel those discussed above in regard to residential tenancies, others are specific to caravan park residencies.

Security of tenure

Many residents live in fear due to the lack of security of tenure. The RTA does not currently provide for long term leases in caravan parks and park operators will not readily provide security. This leaves residents feeling vulnerable and disempowered and affects their ability to exercise their rights.

Affordability

Rents in caravan parks are generally reasonable compared to other forms of rental housing, yet residents often express concern regarding rent increases and how they are calculated. Very often rent increases appear excessive in relation to the lack of, or limited improvements in, services provided by the operator, such as maintenance of common areas. Although the process to have a rent increase investigated through CAV is clear and can be easily followed by residents, often the responses provided to residents by CAV inspectors, and the criteria used for assessment, appear inappropriate or insufficient to provide for a reasonable evaluation.

Housing quality and standards

Improvements have been made in the construction of park dwellings but many caravan parks still retain older dwellings, sometimes well over 30 years old. Improvements are often made along the way as people live in and own them, yet the building regulations and standards have changed and it is near impossible, not to mention very costly, to bring the more traditional dwellings up to standard.

For owner/renters their choice of housing is usually a result of what they can reasonably afford, and this will often translate into limited finances to be able to significantly upgrade their dwelling. Unfortunately this can sometimes result in people being evicted due to the age of their home, without any clear provision for compensation and support. Alternately park operators may interfere with their right to sell, for example informing them they are not entitled to sell on-site, again with a lack of clear provisions for dispute resolution, support, and compensation.

Where parks rent out older dwellings often they are poorly insulated, poorly heated in the winter, and sometimes do not contain amenities such as a toilet and shower. For an older person these conditions are inappropriate and could impact significantly on their health and wellbeing. Unfortunately there are no minimum standards prescribed to ensure park rental housing is in liveable condition. This tends to be more of an issue in older parks run by smaller or individual operators.

Adaptability and accessibility

Most park dwellings, whether rented or owned, are accessible via steps and tend to have narrow doorways and rooms. Unfortunately most park dwellings are not adaptable, whether due to the internal design or the external space provided on the site, this can make it difficult for residents to remain living in their home.

Doorways are often too narrow to fit a wheelchair, walking frame or ambulance stretcher; sites are often too small to allow for a ramp to be built according to regulation; and sometimes park operators refuse permission to modify due to the 'aesthetic' of the park. There is no obligation for the park operator to allow for modifications to assist an older resident to live comfortably in their home.

Other issues to consider:

- Disclosure provisions for prospective residents;
- Compensation and protective provisions for residents with the sale or closure of a park;
- Sale conditions especially for older dwellings;
- 60 day restriction before becoming a permanent resident can deter people from moving into a park;
- The lack of provision to allow for residents committees;
- The lack of consistent agreements or agreements in writing;
- Crown land and Department of Environment, Land, Water and Planning restrictions;
- The current lack of management standards and the often feudal approach by park operators towards residents through intimidation and bullying;
- Unfair, unreasonable and unenforced park rules, and the lack of consistent application of rules;
- Clearer rights and responsibilities in relation to the caravan park regulations, as well as for the general park environment; and
- Lack of clarity in relation to rights for permanent residents associated with communal facilities.

We look forward to discussing these matters in more details in an issues paper specific to caravan and residential parks.

Residential Parks

'Residential parks' emerged in Victoria around the 1980s and onwards, developing from the holiday lifestyle options most prevalent on the New South Wales and Queensland coasts.

The term 'residential parks' arose when people, mostly retirees, began living permanently in caravan parks where they owned a moveable dwelling but rented the site on which it stood.

The evolution towards permanent living created the development of 'residential villages' which began in Victoria in the late 1990s early 2000s. Residential villages are purpose built villages for permanent living where people own their moveable dwelling and lease the site on which it stands. Villages are marketed mostly at people over 55 years of age, often offering a more affordable retirement lifestyle than retirement villages. Although the level of affordability has changed, these villages have experienced significant growth in recent years.

One company, operating residential villages solely in Victoria, presented at their Annual General Meeting in 2014 that they have "a proven business model structured for sustainable growth".[21] Since entering the industry in 2003 they have secured almost one village per year and in 2014 accounted for a "net profit attributable to shareholders up 76% to $12.3 million".[22] This highlights just how significant the growth of this sector actually is.

Residential villages are currently covered by Part 4A of the RTA. They contain anywhere from 20 to 400 sites and are scattered across Victoria. Units cost from $100,000 to $500,000, depending on location and services provided on-site. Communal facilities are always included but at varying levels depending on the operator and the size of the village.

As well as the purchase price of the unit ongoing fees are paid during the term of occupation and some operators are now also charging exit fees, such as Deferred Management Fees (**DMFs**) and refurbishment costs.

The industry in Victoria is still fairly small in comparison to other States but is steadily growing, as indicated above, without proper legislative and regulatory protections for residents. In line with the growth of the industry, and the need for more affordable retirement housing options, residential villages could be a very viable type of housing for older Victorians, provided legislation and regulation develops in response to changes in the sector.

Current situation

Confusion is created by linking residential villages with current RTA parks legislation. Residential Villages are distinct forms of accommodation. They have many differences to caravan parks but fundamentally the definition is in relation to having the majority of residents living permanently in the park/village.

The most effective, appropriate and comprehensive approach is not to reform the existing Part 4A but to introduce stand-alone legislation for this form of housing, as exists in all other states in Australia.

Separate legislation provides meaning and purpose for residents and operators. The residential villages industry does not naturally align with the RTA due to the village set-up and operation. Terms such as lifestyle village, leisure park and retiree accommodation suit the style of accommodation provided and therefore separate legislation that best describes all aspects of this housing type and the services offered is more appropriate.

For residents and operators to be protected the legislation that covers them must make intuitive sense. This would flow through to dispute resolution procedures, conciliation and advocacy services, and potentially a Residential Villages List at VCAT.

Other states have distinct legislation for parks and villages because they have the volume of stock to warrant it. Because of the residential village boom in Victoria, our state has reached a threshold that justifies similar separate legislative coverage. It would align Victoria with other states and assist residents and operators moving across state jurisdictions. It would also help with ongoing national reform of housing supply and legislation.

Some key issues to consider:

<u>Security of tenure</u>

Residents have made a significant financial investment, sometimes investing their entire life savings into their dwelling, which should be met with equally significant security of tenure. The industry is widely varied in its current willingness to offer long term leases. This is in sharp contrast to the standard practice in the retirement village industry.

The retirement village industry was developed from the beginning with an understanding that their core business is based on offering retirees long term

tenure. In comparison the residential villages industry has a mix of small and large scale operators with the small operators 'cashing-in' on the retirement concept but without clear standards and best practice procedures to guide them. This failure of the residential village industry to offer sector-wide standards in secure tenure demands the need for legislative regulation and protection.

HAAG supports 50-year minimum lease terms to provide protection for residents through their retirement years.

Despite these parallels, we emphasise that residential parks require stand-alone legislation, and it would not be appropriate to try to include them with the *Retirement Villages Act 1986* (**RVA)**. Owner/renter arrangements in residential villages are different to leasehold and strata title arrangements in retirement villages therefore the unique model provided in residential villages requires its own legislative considerations.

Management standards

One of the biggest issues presented by residents relates to management attitudes and the lack of professionalism that exists in this field. There is currently no standards for managers, and no training required for people to undertake these leading roles. For this reason residential village operation must be separated from the old caravan park culture.

Many residential park and village operators have an old-fashioned caravan park, almost feudal approach to park management and liaison with residents. Changes are needed to stop this endemic problem in the sector. Retirees' lives are negatively impacted and in some cases severely damaged by the behaviour of many park and village owners and managers. Creation of new legislation would set appropriate standards for this type of accommodation and release the shackles from the old model.

Community living

Community management issues are fundamental to life in residential villages but are not addressed in the RTA. Therefore separate legislation should also cover the following aspects:

- Park or village liaison committees;
- Annual meetings held by park owners;
- Sinking funds;
- Maintenance of common areas and property;

- Internal dispute resolution procedures;
- Village registration and management compliance system; and
- Additional services offered

Affordability

As indicated above, the cost of living including fee increases and utility charges, for many residents can mean their ability to sustain their residential village arrangement is impacted. Coupled with exit fees it can also mean residents have no option but to stay put due to limited availability of other housing types.

Separate legislation could take into account rent and fee protection, limits on rent increases, and improved disclosure provisions given the majority of residents are on a fixed income. Generally residents move into a residential village to stay there for the rest of their lives and they tend to invest the majority of savings in their homes. Affordable fees could ensure the liveability of villages and protect the viability of the business.

Building and planning regulation

There are significant problems with the building structure arrangements in residential villages that require legislation to ensure the accommodation can be developed appropriately. The current Act does not deal effectively with the design and modification needs of residents especially in terms of age-related needs.

Other issues to consider:

- Electricity charges, embedded networks and the lack of ombudsman access;
- Unit design and accessibility, and village design and accessibility;
- The need for a standard site agreement and more prescribed terms;
- The need for detailed guidelines about how a residents committee might function;
- DMFs currently unregulated;
- The need for a central register of residential parks and villages;
- Clarifying the fees payable after vacating a unit;
- Clarifying responsibilities around repairs and maintenance of sites, and dwellings due to site or foundation movement;
- Dispute resolution procedures – internal and external;
- CAV inspection / rent assessment powers;
- CAV complaints procedures and enforcement powers;
- Improving access to justice through VCAT;

- Disclosure for prospective residents;
- Clarifying the link with Australian Consumer Law;
- Definition of transportable and moveable;
- Issues with mail, letterboxes and addresses accessible to emergency services;
- Regulations relating to matters such as: emergency management and fire safety, lighting and waste disposal; and
- Sale conditions and protections, change of use, sale of park and park closure provisions

Part 4A

Part 4A was introduced into the RTA in September 2011 after the Government recognised the need to address the evolution of park living. Unfortunately some of the provisions were not well thought out and have resulted in legislative gaps and lack of clarity regarding rights. Some provisions are confusing and lack cohesiveness in relation to other parts of the RTA.

Security of Tenure

Unfortunately the Government did not take the step to introduce long term leases into Part 4A. Instead an unsatisfactory provision was introduced that provides minimal protection for new park developments but no protection for existing residents. The RTA does not provide adequate security of tenure for residents, which means operators are free to decide the level of security they will provide. Although now provided by some of the larger operators in Victoria, security of tenure is still generally scarce with a lack of consistency across the sector. Given this type of housing arrangement is targeted at older people there is a need to consider security of tenure as a key issue.

Although Part 4A introduced an extended notice period for the no reason notice to vacate, a provision that allows for eviction without cause will never allow site tenants to feel secure.

Repairs and maintenance

In all other forms of tenancy there are clear guidelines about rights and responsibilities in relation to repairs and maintenance. Due to the alternative arrangement covered by Part 4A, where a site tenant owns their dwelling but leases the site on which it stands, it is generally accepted that they are responsible for the repair and maintenance of their dwelling.

What is unclear is where responsibilities lie for the site tenant and the site owner in relation to repairs and maintenance of the site and any fixtures of the site that do not or arguably do not form part of the dwelling (such as fences). It is also unclear what rights site tenants have if their dwelling is within warranty period and requires significant repair or if their dwelling is negatively impacted by movement or subsidence of the site and/or foundation (such as a concrete slab).

Affordability

Site fee levels do not always reflect a pensioners' income affordability, and the cost of utilities and other living expenses can often result in concerns they will not be able to manage in the long term. Exit fees, such as DMFs and administration fees, are more prevalent in the sector now and can mean that site tenants often feel trapped in their situation because of the loss they would incur if they did decide to sell and leave the park.

DMFs are not regulated by the RTA and there is no clear site fee increase formula. The majority of site tenants are pensioners and affordability is a key reason why people choose this type of housing, yet it is becoming a less affordable long-term housing option due to ever rising costs. This highlights a need to consider a more equitable formula for fee increases and more regulation for additional costs that park operators can charge.

The purpose of fees and costs, such as DMFs and even site fees, are often unclear to residents, and even though the RTA states that all rents, fees and charges and their purpose must be clearly disclosed there is no guideline as to what specific information must be included. Ensuring there are clear disclosure provisions is important to improve transparency and financial accountability.

Adaptability and accessibility

Similarly to caravans in caravan parks, moveable dwellings in residential parks are not built with the target population in mind, and neither is the park environment. The majority of dwellings have steps upon entry, narrow doorways throughout and are not designed for disability access. Residential park living is targeted at people over 55 years of age and needs to consider the changes to mobility that might occur with age, including requiring easy access for emergency services.

The aesthetic of the village environment often results in park operators not allowing ramps to be put in at the front of a dwelling, but regardless of permission most park environments do not have enough room to build a ramp to standard at the front of a

dwelling. This means it must be put in at the back or side door, usually running through a carport or garage.

There are other concerns too like the lack of pathways in some parks or the terrible state of the roads that mean site tenants with scooters, wheelchairs and walking frames struggle to be mobile throughout the park. At times even communal facilities do not provide ramp or flat level entry and can often be built without rails.

What is highlighted above is the inherent complexity within the residential parks and villages sector. Again, we look forward to discussing these further along with preferred outcomes in response to an issues paper on caravan and residential parks.

8. What are the key issues for regulating the private rental sector that arise from the growing proportion of older tenants, and how should the RT regulations take these into account in the private rental sector?

Independent Living Units

During the 1950's the Australian Government passed the *Aged Persons Homes Act 1954* (**APHA**) which funded churches, charities, and not-for-profit organisations to provide housing for older people. As a result 34,700 Independent Living Units (**ILUs**) were built over a 30 year period providing "affordable, independent housing for lower-income older people".[23]

In Victoria approximately 9,000 units were built during this period. However, over time ILU stock in Victoria has reduced due to the sale of housing caused by a lack of access to capital funds for refurbishment. A national survey undertaken of providers of ILUs found that in Victoria there was a 23% loss in the number of ILUs available between 2002 and 2010.[24]

During the 1980's funding provided under the APHA ceased. As a result two models of ILUs have developed over time: those covered by the *Retirement Villages Act 1986*, and those covered by the *Residential Tenancies Act 1997*. Both models have similar characteristics, usually bedsitter or one-bedroom units in small clusters, with very limited (if any) communal facilities and spaces. The main differences lie in the financial model. For this submission we are only addressing ILUs covered by the RTA.

ILUs are considered residential tenancies under the RTa. ILUs are managed by churches, charities, and NFP organisations. Eligibility for entry, the level of rent and the facilities provided depend on the managing organisation. ILUs continue to be provided as a mostly affordable and relatively secure form of housing specifically for older people although these protections could be more appropriately legislated.

Many of the key considerations for ILUs are the same as those in the private rental sector.

<u>Security of tenure</u>

ILUs lack security of tenure although they are provided specifically to pensioners often on the premise that people can live there as long as they need to. Unfortunately without legislated security tenants are still vulnerable to sale, closure and unfair eviction. The existence of no-reason notices to vacate fuels the lack of security that some residents feel.

Adaptability and accessibility

As ILUs were generally built between the 1950s and the 1980s, many ILU clusters contain ageing stock that is inappropriately designed for people as they age. ILUs tend to have stairs rather than lifts and small units that are difficult to access with wheelchairs, walking frames, or ambulance stretchers. The ability of a tenant to modify their home is dependent on the goodwill of the operator.

Minimum standards

As the ILU stock is ageing, conditions are deteriorating, but unfortunately the organisations operating ILUs often cannot afford to undertake capital works to improve the standard of housing. This can result in operators selling village sites which impacts negatively on tenants, not to mention the limited retirement housing options available if tenants have to find an alternative. There are concerns about the need for minimum standards but uncertainty of the best way to apply this in the current situation, unless Government was willing to provide subsidies to organisations to improve their current stock to ensure security and improved housing options for older tenants.

Affordability

Rent affordability and protection are important for ILU tenants. ILUs are especially catered towards low income pensioners and therefore need to provide a lower than average rent to ensure tenants can sustain their tenancies.

There are some key characteristics of ILU rental that the current Act does not consider at all. Specifically, the RTA also does not address community living aspects which are a main feature of ILUs.

This includes:

- The use, maintenance, cleaning and safety of communal areas and facilities;
- Emergency management planning;
- Village management – standards and attitudes from managers who often have a lack of knowledge of relevant legislation and the needs of older people;
- Residents committees and meetings;
- Internal dispute resolution procedures;
- Financial accountability from the operator;
- The need for tenancy agreements; and

- Disclosure to prospective residents.

The RTA needs to consider this form of housing in a specific way and provide for a section in the Act that addresses the key characteristics, as well as the more general tenancy matters, in a way that is more appropriate for the target population.

Rental Villages

Rental villages, operated by private companies, are targeted to aged pensioners who want a supported housing option with independent living conditions.

Historically rental villages in Victoria have been covered by the RTA and tenants pay 85% of income as rent, including 100% of CRA.

Units are semi self-contained, usually in clusters of 40-100, without a stove, large fridge, or laundry facilities due to a portion of rent paying for the provision of meals and a linen service. Utility and phone charges are paid for separately by the tenants.

It if often unclear whether particular villages should be considered rooming houses, due to the combination of independent units with communal facilities, or residential tenancies, as the units are substantially self-contained. This creates significant confusion as to the rights and obligations of the parties to residential village agreements.

Five years ago it was estimated there were around 3,000 residents in rental villages across Australia. We believe the current total number of residents would be about the same. Most rental villages in Victoria are located in regional areas and populated by a majority of people who are 80 years of age and over which translates into a fairly vulnerable group.

This is an area of housing that has been overlooked for a long time. HAAG has attempted to encourage review and reform in this space but up until now it has been largely unnoticed. HAAG hopes this review process will encourage specific reform that will address some of the key issues experienced by tenants in rental villages.

Many of the considerations for rental villages are, again, the same as those in the private rental sector.

Security of tenure

Some operators provide 12 month agreements but most provide periodic agreements. This means tenants are vulnerable to eviction and for those over the age of 80 the lack of security can be stressful and significantly deters people from exercising their rights. The 120 day no reason notice to vacate exacerbates the sense of unease tenants feel as well.

Along with a lack of security some operators do not provide tenancy agreements, and in some cases bonds are paid but not registered with the Residential Tenancy Bond Authority (**RTBA**). This highlights the confusion that is rife in this sector.

Affordability

A rent that is set at 85% of income plus 100% rent assistance results in housing stress for tenants and can only be sustainable if someone has savings to draw from. Given this form of housing is provided for older people rent should be set at a more reasonable level. Other services, such as the provision of meals and linen service, should be set as separate costs and should only be payable if utilised.

Similar to ILUs some characteristics of rental villages are not considered in the RTA at all.

Provision of other services

Services, such as meals, and the associated financial accountability are not regulated under the RTA or any other specific legislation and therefore the quality and quantity of food has always been a concern for residents. Consumer law may provide protection in regard to the provision of goods and services but such general legislation is unlikely to be used by vulnerable residents. In HAAG's experience no residents have been willing to challenge a village on this basis.

In fact most rental village residents are unwilling to challenge a village on any basis, even if their rights are straightforward and clear, due to a lack of security.

The RTA needs to provide better protections for this housing type taking into account the special characteristics and the specific cohort it caters for.

Other matters to consider:

- Use, maintenance and accessibility of communal facilities and areas;
- Management standards and behaviour;
- Residents committees and meetings, and consultation about services;

- Emergency planning;
- Internal and external dispute resolution procedures; and
- Disclosure to prospective residents.

The matters outlined above, including HAAG's recommendations and preferred outcomes, will be provided in more detail in response to the specific issues paper on older people.

10. What situations trigger issues of affordability in the rental housing sector, and how do these affect tenants and the choices they make?

Along with security of tenure, housing standards and the need for modifications, affordability is one of the key issues that cause rental housing to impact on the quality of life of older people.

Key factors that impact on affordability for older people in the private rental market are:

- Rent level data and independent reports show that affordable private rental properties, for people on low incomes such as age pensioners, are almost non-existent. Therefore choice does not exist, but difficult decisions are made by older people about the level of unaffordability they are willing to ensure. The average cost of a one-bedroom flat in metropolitan Melbourne is $300 per week and this would consume 64% of an age pensioners income (includes all available government subsidies such as pension supplements and rent assistance).

- Older people prefer to rent for longer periods of time and thus can suffer rent increase 'shock'. This can occur if their rent has not risen in line with market rises for some time and then receive a rent increase that, in some cases demonstrated by HAAG clients, has doubled a person's rent in one notice. This can cause immediate unaffordability and force an older person out of their home within a very short period of time. Rental 'shocks' can also occur once an older person is evicted and they seek available properties on the market. They often find that the rent for new tenancies have risen significantly higher than the rent they had become accustomed to. Rental shock is also a factor for many older renters who are impacted by landlords who see a rent rise as the quickest way to evict a tenant. A prohibitive rent rise can result in an older person being served with a 14-day notice to vacate for being in arrears and on a quick pathway to eviction. It is also important to note that HAAG's former practice of recommending that tenants request CAV rent inspections to determine if rent increases are excessive has almost completely stopped in recent years due to the overall high rents across the market.

- While there is alarming data in the Fairer, Safer Housing consultation paper on the significant increase between 1996 and 2011 of the proportion of tenant households in severe housing stress (paying 50% or more of their income in rent), the situation is much worse for older renters due to their housing choices. For example, in HAAG's experience a large number of older people are lone person households and therefore seeking one-bedroom properties. Low-income one-bedroom-occupier tenants are far more likely to be in housing affordability stress due to the ratio of rent to income compared to couples and families. It appears

likely that a much higher proportion of older renters on age pensions would be suffering severe affordability stress due to this common scenario.

- It is clear from independent evidence produced by AHURI over recent years that more people on higher incomes are competing with people on low incomes for affordable rental properties. This increasingly competitive nature of the private rental market has increased rents and also makes it more difficult for older people to compete against 'better risk' tenants on higher incomes. As stated previously such rent increases are also used as de facto eviction notices.

- While vacancy rates have recently reached levels near 3%, which is the target for greater equilibrium between supply and demand, the long term trend over the past ten years has been consistently lower than that level. This has created a rental market where rents have risen above inflation and older people are competing against many people on higher, working incomes. The tight rental market has also seen the rise of the rental auction spectre where tenants have been 'bidding up' the price of rental accommodation in a highly competitive environment. Older people are completely unable to cope with this situation.

These factors have led HAAG to the conclusion that private rental accommodation is completely unsuitable for older people seeking long term housing.

16. Are the current arrangements for resolving disputes and providing access to redress for both landlords and tenants sufficient, or are other mechanisms needed?

Both in legislation and in practice, there is a strong imbalance in terms of the enforcement mechanisms available to parties in residential tenancies disputes. Applications by landlords generally attract robust enforcement mechanisms, while applications by tenants do not. For example, when a tenant owes a landlord money at the end of a tenancy it can be taken from a bond; when a landlord owes a tenant money at the end of a tenancy, there is no landlord bond – the tenant faces a time-consuming and costly debt enforcement process if they wish to collect the judgment from a landlord unwilling to pay.

Similarly, one of the main reasons tenants apply to VCAT is for repairs. When a tenant successfully applies for a repairs order (urgent or non-urgent), the Tribunal sets a deadline by which the repairs must be completed. If they're not completed by that date, the tenant can renew their application and may be entitled to seek an order to pay rent into the rent special account and for compensation at a daily rate until the repairs are completed – but the Tribunal is typically reluctant to make these orders. At the hearing of the renewed application, the most likely outcome is a new deadline by which the repairs must be completed, and perhaps a stern warning to the landlord that the Tribunal is serious, this time. If the deadline passes, the tenant can again renew the application and hope that this time the Tribunal might use its powers to compel the landlord to carry out the repairs.

Landlords apply to VCAT, in part, because they reasonably expect orders in their favour will be enforced – possession orders by the sheriff, compensation orders from the bond, etc. Tenants do not apply to VCAT, in part, because they have no such expectation.

The Act already contains provisions to enforce orders made against landlords – in particular, the capacity to make orders for rent to be paid into the rent special account and/or for compensation paid at a daily rate, and, on the other hand, the penalty provision for failure to comply with a Tribunal order. In practice, though, the Tribunal rarely makes either of the former orders and does so only after repeated and exceptional recalcitrance on the part of landlords, and likewise CAV tends not to enforce penalties except where landlords exhibit systematic malfeasance. A simple presumption that on the renewal of a repairs application the Tribunal would order rent to be paid into the rent special account (perhaps with options for landlords to rebut the presumption based on severe hardship) would go a long way to providing more efficient redress for tenants.

Another problem with current dispute resolution processes it that there is nothing to discourage landlords (or, for that matter, tenants) from making highly inflated compensation claims through VCAT. In part, this stems from the low-cost nature of the jurisdiction; the possible awarding of costs does not form a significant part of most parties' calculations when they make applications. This results in landlords – notably including the Director of Housing – making extremely high compensation claims in the expectation that VCAT will probably accept at least part of the claim, rather than making applications based on reasonably quantified, actual losses.

17. What factors contribute to tenants exercising, or not exercising, their rights?

In our view the major factor that prevents tenants from exercising their rights: lack of secure tenure, with the corresponding expectation that tenants who enforce their rights (to repairs, to challenge rent increases, to quiet enjoyment) may face eviction. This was highlighted as an issue of concern in the Commonwealth Senate report on Affordable Housing, which concluded "Renters in a very tight rental market and with little bargaining power are also in a weakened position when it comes to protecting their rights as tenants."[25] Hulse and Saugeres found that low-income tenants facing problems with landlords "did not usually say anything because they were in vulnerable financial situations and did not want to risk having their tenancy terminated at the expiration of their lease or being asked to leave."[26] HAAG and its HAL service supports large numbers of clients who on being informed of their rights, decline to exercise them for fear of eviction – as one said, after a leaking pipe pumped raw sewage into her home, 'If you want to stay put you have to put up with appalling conditions. If you go to VCAT, the end result is that you win but then you end up losing your home.'

We also concur with the findings of Footscray Community Legal Centre's Home Sweet Home project, which identified two major reasons tenants do not seek to exercise their rights (specifically, the right to repair): lack of information and awareness regarding their rights, and what FCLC called the 'tenant burden' of the relevant processes – what we describe as the structural imbalance in enforcement mechanisms, above.[27]

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Endnotes

[1] Jones et al 2007, viii.

[2] Winter 2015.

[3] Australians for Affordable Housing 2011.

[4] Department of Health and Human Services 2015a.

[5] Petersen and Jones 2013, 26.

[6] Tenants Union of Victoria 2010.

[7] Department of Health and Human Services 2015b.

[8] Economic References Committee 2015, 219.

[9] Hulse and Saugeres 2008, 20-37.

[10] Petersen et al 2014, 94.

[11] Ibid, 59.

[12] Hulse and Saugeres 2008, 27.

[13] Victorian Law Reform Commission 2015, ix-x.

[14] Ibid 56

[15] Economic References Committee 2015, 222.

[16] Hulse et al 2011, 127.

[17] Ibid 127.

[18] Kelly et al 2013, 20.

[19] Commonwealth of Australia 2014, 14-19.

[20] Wensing et al 2003, 59.

[21] Lifestyle Communities Limited, 2014.

[22] Ibid.

[23] Jones et al 2010, 26.

[24] McNelis and Sharam, 2011, 14.

[25] Economic References Committee 2015, 228.

[26] Hulse and Saugeres 2008, 23.

[26] Berry 2013, 5.

Bibliography

Australians for Affordable Housing (2011) 'After the stimulus, affordable housing will decline'. Australians for Affordable Housing viewed 17 August 2015 http://housingstressed.org.au/2011/10/27/after-the-stimulus-affordable-housing-will-decline/

Berry, J. (2013) *Home Sweet Home: Act for the house not the tenant.* Footscray Community Legal Centre, Footscray.

Commonwealth of Australia (2014) *Reform of the Federation White Paper: Roles and responsibilities in Housing and Homelessness.* Department of Prime Minister and Cabinet, Canberra.

Department of Health and Human Services (2015a) 'Public Housing Waiting and Transfer List'. DHHS, Melbourne viewed 17 August 2015 http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/public-housing-waiting-and-transfer-list

Department of Health and Human Services (2015b) 'Current Rental Report'. DHHS, Melbourne viewed 17 August 2015 http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/current-rental-report

Economic References Committee (2015) 'Out of Reach? The Australian housing affordability challenge'. Senate Printing Unit, Canberra.

Hulse, K., Milligan, V. and Easthope, H. (2011) *Secure occupancy in rental housing: conceptual foundations and comparative perspectives*. Final report, AHURI, Melbourne.

Hulse, K. and Saugeres, L. (2008) *Housing Security and Precarious Living: an Australian exploration*. Final report, AHURI, Melbourne.

Jones, A., Bell, M., Tilse, C. and Earl, G. (2007) *Rental Housing Provision for Low Income Older Australians*. Final report, AHURI, Brisbane.

Jones, A., Howe, A., Tilse, C., Bartlett, H. and Stimson, B. (2010) *Service integrated housing for Australians in later life*. Final report, AHURI, Melbourne.

Kelly, J-F., Hunter, J., Harrison, C., and Donegan, P. (2013) *Renovating Housing Policy*. Grattan Institute, Melbourne.

Lifestyle Communities Limited (2014) '2014 AGM Presentation'. Lifestyle Communities Limited, South Melbourne viewed 17 August 2015 http://www.lifestylecommunities.com.au/investor-information/presentations

McNelis, S. and Sharam, A. (2011) *National Survey of Providers of Independent Living Units (ILUs) for people with relatively low incomes*. Aged and Community Services, Melbourne.

Petersen, M. and Jones, A. (2013) *Addressing Later Life Homelessness Amongst Older Australians*. Institute for Social Science Research, UQ, Brisbane.

Petersen, M., Parsell, C., Phillips, R., and White, G. (2014) *Preventing first time homelessness amongst older Australians.* Final report, AHURI, Melbourne.

Tenants Union of Victoria (2010) 'Renters exposed by outdated law'. TUV, Melbourne.

Victorian Law Reform Commission (2015) *Photographing and Filming Tenants' Possessions for Advertising Purposes: Report.* Victorian Law Reform Commission, Melbourne.

Wensing, E., Holloway, D., and Wood, M. (2003) *On the margins? Housing risk among caravan park residents*. Final report, AHURI, Melbourne.

Winter, I. (2015), 'Presentation'. DHHS, Melbourne viewed 17 August 2015 http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/housing-and-accommodation/homelessness-and-social-housing-updates