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Residential Tenancies Act review
Security Of Tenure Issues Paper

This submission is a response by Housing for the Aged Action Group (**HAAG**) to the 'Security Of Tenure' 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.

What are the needs and preferences of tenants and landlords for security of tenure?

Tenants

1. Why is security of tenure important for Victorian tenants?

2. What factors influence tenants' preferences for stability and flexibility in rental accommodation?

As HAAG argued in our original submission to the review, security of tenure is the number one issue that concerns older people in all forms of housing. Older people across the spectrum of rental housing – whether in private rental, public housing, residential parks, rooming houses, or retirement villages – need to know that they can live in their accommodation long term.

Older people need long-term housing to enable them to successfully age in place as it provides the foundation for good health and well-being. There is considerable case evidence from HAAG's Home at Last (**HAL**) service that older people who are denied secure tenure and are forced to move from their accommodation can suffer serious consequences as a result. The stress and direct physical impacts of forced removal has resulted in hospitalisation, premature entry into residential aged care, and even death through ill health and suicide.

Secure tenure is also the fundamental focus of the work conducted by HAL. The three most common reasons clients contact Home at Last for assistance are all related to lack of security of tenure: 32% have experienced a housing crisis, principally receiving a Notice to Vacate, 29% are suffering housing affordability stress due to no longer being able to afford their rent, and 27% are forced to leave because their housing conditions do not permit them to age-in-place.

On the other hand, the key factors that HAL focuses on when seeking suitable accommodation options for older people are related to the same issues, but from a positive perspective: we seek housing that provides older people with lifetime tenure, affordable and regulated rental charges, and housing that is designed for and adaptable to their health needs as they age. As such, the preferred housing options for older people are: public housing, social housing and not-for-profit independent living units. Private rental remains largely unsuitable.

While flexible housing tenure may be a key factor for younger people, particularly those who are very mobile from year to year such as students, older people want to know that they can stay in their accommodation, not just for a certain period of time, but for a time-span that enables them to live out their retirement years. This is because they do not have the financial and personal flexibility to adjust their circumstances. For example, an 80 year old who relies on the age pension as their only form of income, receives some community aged-care services, and relies on locally based medical, commercial, and social supports can be devastated if they are forced to be dislocated from their home. Research also shows that a persons'

home increasingly becomes the focus of their daily environment as they age and they spend more time at home for their recreational and social needs, as well as basic support and sustenance.

A further important factor is that security of tenure provides the basis upon which older people can have the confidence to exercise their rights in regard to other sections of the Residential Tenancies Act, such as repairs. HAL has had many clients who have lived in squalid housing conditions because they have been afraid to exercise their rights for fear of either eviction or a rent increase they could not afford. Many older tenants have sought to improvise a form of secure tenure by forming unwritten (and unenforceable) agreements with their landlord where they do not ask for repairs with the understanding that the landlord will not increase their rent prohibitively. However, this arrangement can unravel when a landlord decides to seek a rent increase anyway. For example, one client of HAL had rented a very basic flat form 15 years and had tolerated maintenance problems such as a hot water service that broke down regularly. Rather than requesting that the landlord fix the problem, she would bathe herself by boiling the kettle and giving herself a sponge bath. On a number of occasions the hot water service started working again after a week or two and the crisis was averted. The tenant was willing to tolerate this situation out of fear and lack of alternatives until the day the landlord decided to double her rent and she could no longer afford to live there. Fortunately, HAL were able to rapidly rehouse her.

Further, as security of tenure is also impacted by the standard of housing that is provided by landlords, HAAG submits that the Residential Tenancies Act should include a set of minimum housing standards to ensure that fundamental health and safety aspects of housing is provided if housing investors intend to enter the rental property market. This again would ensure that accommodation does not negatively affect older tenants to the point where they are required to vacate their home because fundamental facilities are not available. Currently landlords are only required to maintain the facilities that are available at a dwelling at the beginning of a tenancy. There is no statutory responsibility to provide heating, ceiling insulation, energy efficient appliances, secure door and windows or wind and cold draught protection. HAAG believes that these factors are contemporary housing standards that are expected in any owner occupied home and that they should also apply to rental housing conditions.

Finally, HAAG submits that the Residential Tenancies Act should also provide improvements to security of tenure by requiring landlords to accept minor modifications to their home where tenants need them for disability or ageing related purposes. HAL has assisted clients who have been evicted or forced to move because a landlord has refused works such as handrails, bathroom shower aids and mobility ramps, even where the tenant has proposed to pay for the costs themselves and even offered to remove them whenever they vacate the premises. In other words, it should not be a unilateral right of a landlord to refuse such modifications and reasonable alterations should be allowed by law.

Overall, HAAG's principle proposition in regard to security of tenure is that it should be a right for an older person to live long-term in their accommodation, and be protected from other factors that could force them unreasonably to leave such as high rent increases, poor housing conditions, and disability modification needs. Significant changes have occurred in recent years in the housing market and the private rental housing is utilised by tenants for more than transitional needs of younger people or as a stepping stone to home ownership or public and social housing. As access to home ownership continues to decline and government expenditure on public housing decreases, private rental housing will be an increasingly significant form of long-term housing supply. Tenancy laws must keep pace with these changes.

How does the Residential Tenancies Act provide for security of tenure in general residencies?

Lease terms

8. What are the obstacles (including any provisions in the Act) to tenants and landlords entering long leases?

For tenants, the key obstacle to entering longer leases is that longer leases simply are not offered in the Victorian rental market. Fixed term tenancy agreements beyond 12 months are extremely rare. Beyond this, the Act excludes agreements longer than five years (a provision with no obvious benefits, and which is redundant given that longer leases are not on offer).

Were it possible for tenants to enter or negotiate longer leases, the major obstacle would be the widespread misunderstanding of the mechanisms for ending a fixed term tenancy agreement early, and the systematic obfuscation by real estate agents of the actual liabilities of tenants who break their leases.

When tenants give notice they will break a lease, real estate agents routinely tell them they must keep paying rent until a new tenant moves in – indeed, the current issues paper reproduces this claim, saying that "if a tenant wishes to break a fixed term agreement, they can be liable to continue paying rent until the end of the term (or until a new tenant is found)". This is simply not the case. Tenants are liable under section 210 to compensate the landlord for any loss they suffer as a result of a breach of the tenancy agreement, which can certainly include rent lost due to a lease break; and this is limited, in particular, by the discretion under section 211(e) for the Tribunal to consider whether a landlord has mitigated their loss.

The Tribunal consistently distinguishes between what agents like to consider an obligation to continue paying rent (often framing this as 'arrears' even though the tenancy has terminated) and what is actually at stake in a lease-breaking claim, a potential liability for lost rent. The Tribunal is consistent in expecting that a landlord take all reasonable steps to relet the rented premises so as to mitigate their loss; a landlord who failed to readvertise a property promptly, or tried to raise the rent, is likely to have any claim reduced based on a failure to mitigate.

Moreover, tenants seeking to exit fixed-term agreements are often mis- or under-informed by agents about the options open to them; in particular, with regards to assignment. Tenants may break their lease at significant cost where it would have been easier, cheaper, and more convenient for all involved if they had assigned their interest to a new tenant.

Case study:
An elderly gentleman contacts HAAG three months after breaking his lease. He has continued to pay rent at his former address, as the agent has told him is required, but the agent has not yet readvertised the property. This has caused the former

*tenant severe financial hardship. When the tenant has questioned the agent about this, the agent insists he will take the tenant to the Tribunal if he stops paying and the tenant is too intimidated to assert himself further. After receiving advice, the tenant nervously agrees to stop paying. After a series of threats to seek compensation, the agent never makes any attempt to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) as it is clear the tenant has already paid substantially more than he was liable for.*

Case study:
After supporting one tenant in a VCAT hearing, a HAAG worker is approached in the Tribunal foyer by another elderly tenant who is about to face the Tribunal to defend a claim for lease-breaking costs. The agent begins their claim by insisting the tenant is in 'rent arrears' based on the rent purportedly lost due to the lease break, and is quickly corrected by the Member. A few simple questions establish that the landlord undertook renovations after the tenant vacated rather than mitigating their loss by finding a new tenant, and this substantially reduces the amount for which the tenant is liable. Without advice and support, the tenant would not have known to pursue this line of argument.

Case study:
An older tenant realises he will have to vacate his rental property before the end of the fixed-term tenancy, but has a friend with a good rental history looking for housing, so he asks the agent if he can swap the lease over. Rather than arranging an assignment, the agent tells the tenant he has to break the lease – with a cost significantly greater than would have been necessary if the tenancy was simply assigned. By the time the tenant realises this was an option, he has paid the fee and has no means to recover it.

The distinction between *an obligation to keep paying rent* and *a liability for lost rent* can seem trivial, but in practice it has a very substantial impact on the amount tenants pay. Currently, the ability of agents and landlords to blur this distinction, and to withhold information about other options to exit a fixed term tenancy, results in many tenants paying in excess of their actual obligations when they break a lease. We are worried that these effects could be greatly exacerbated if leases became longer.

9. How do industry practices influence lease terms and duration of tenancies more generally?

HAAG sees a significant number of clients whose private tenancies have been unusually long (in the 10-20 year range). Almost without exception, these are tenancies that have been managed directly by the landlords, without a real estate agent. While such tenancies can have their own problems, we observe a strong correlation between the involvement of real estate agents and shorter tenancies. We believe this correlation includes at least some causal element – in particular, that real estate agents benefit directly when tenancies turn over as they may collect new letting fees, sales commissions, or fees for attending VCAT in relation to possession and/or bonds.

Moreover, the number of long tenancies we say simply does not translate into long lease terms. While we routinely see clients who have lived in the same private tenancy for 15 years or more, it is still exceptional for us to see a tenancy agreement of even two years length. Overwhelmingly, tenancy agreements are either for 12 months or periodic.

10. What role would long (five to ten year) leases play in strengthening security of tenure?

Longer leases would play a significant role in increasing security of tenure for older tenants. In particular, one of the most common stories that brings tenants to HAAG's housing service is that they have rented from a private landlord over a long period, but the landlord has passed away or moved into care and the former landlord's children immediately move to evict the tenant – generally on 60 days notice for sale. These situations are extremely stressful for tenants who have long considered the rental property their home. Longer leases would tend to provide a buffer for tenants in this situation, who would then understand that their tenancy was likely to end at the conclusion of their lease but would not lose their home over just two months.

We believe that longer leases have a major role to play in increasing security of tenure, along with stronger regulation of tenancy terminations (discussed below).

11. What factors or circumstances would make longer leases attractive to tenants and landlords?

HAAG's members generally favour longer leases, but express significant concerns as to what would happen if they had to end the tenancy earlier than expected – in particular, for health reasons such as the need to enter residential aged care, or simply needing to be closer to supports or family.

We believe that greater clarity as to the options to end a fixed-term tenancy early, and better regulation of the claims real estate agents make in this regard (perhaps prescribed information landlords were required to provide when a tenant announced their intention to break or assign a fixed term tenancy) would make longer leases more attractive to tenants, and reduce the extent to which tenants paid in excess of their liabilities.

12. If long term leases were provided for in the Act, what protections (if any) would be required for tenants who are seeking only short term leases?

The key protection required by all tenants – whether they prefer short or long term leases – is better, more appropriate regulation of tenancy terminations than the Act currently provides. For example, tenants with short-term leases which could not be terminated without a reason would have substantially more secure tenure than do any tenants in Victoria today.

Tenancy terminations

13. What issues are there regarding the way in which terminations provisions in the Act affect security of tenure?

At present, there are a range of problems with the ways termination provisions affect security of tenure.

(a) Sections 248 and 249 both allow a landlord to give a notice to vacate where a tenant has repeatedly breached a duty under the Act. Parallel provisions apply in rooming houses, caravan parks, and Part 4A parks. However, breaches of duty range greatly in seriousness – some repeated breaches may indeed merit eviction, but in other cases it is less obvious that evicition is an appropriate remedy. Section 332 seeks to limit the Tribunal's power to make possession orders based on section 248 notices, but because a notice to vacate can only be given under s248 where the tenant breaches a compliance order (i.e., the breach has recurred), and s330 requires that the Tribunal is satisfied that the breach is not a recurrence, it offers no practical protection.

Case study: A 70-year-old man rents a property from a social housing provider. As a hobby, he keeps a number of broken-down cars in his yard which he works on intermittently. He receives a breach notice for failing to keep the property reasonably clean and, in his absence, the Tribunal makes a compliance order requiring him to remove the cars. As he is practically unable to do so, he fails to comply with the order and so the social housing provider obtains a possession order. It does not seem clear to anyone involved why a social housing provider would evict this man over a matter which is not bothering or endangering anyone.

Breach notices can be legitimately given in response to a range of conduct which is relatively trivial and which would not seem to reasonably constitute a basis for eviction, but the Tribunal has no discretion to assess this in deciding whether to grant a possession order. This means that, for example, a tenant who has installed picture hooks without the landlord's consent and refuses to remove them, or who, on separate occasions, causes minor nuisance to the neighbours, can receive a 14-day notice to vacate with no significant recourse. This is a particular problem given the 'three strikes' policy of the DHHS and some other social housing providers.

(b) Landlords may give tenants notices to vacate for a range of reasons that relate to the landlord's intention, rather than any misconduct on the part of the tenant. The notice period in these cases is generally 60 days (longer if there is no reason given, as discussed below). Older tenants frequently report that 60 days is simply not long enough for them to find and move into new accommodation, due to a combination of financial constraints and physical limitations that make it difficult to attend prospective properties, pack and move their belongings, etc. From our point of view, there is no obvious reason why landlords should not be expected to provide greater notice periods as they would ordinarily plan major renovations, sales, relocations, etc, more than two months in advance.

(c) A landlord may give a tenant a 60-day notice to vacate under section 255 if they intend to repair, renovate or reconstruct the rented premises, and the work cannot take place if the tenant remains in the property. HAAG believes that the word 'renovate' should be deleted from this section, and that a landlord's discretion to evict the tenant simply to renovate a property is incompatible with meaningful security of tenure.

(d) Section 266 states that any of the no-reason notices to vacate are invalid if they are given in response to the exercise or proposed exercise of a right by the tenant. However, the broader range of no-fault notices – repairs, sale, etc – remain valid even if they are given in response to the exercise of a tenants' rights. This weakens the protection intended by s266, and allows landlords to evict tenants in response to the exercise of their rights so long as the landlord intends to carry out repairs, move themselves or a family member into the property, etc. This represents a particular problem for vulnerable low-income tenants, who are more likely to live in properties that require substantial repair and may be subject to eviction should they assert their rights.

(e) Section 264 makes it an offence to relet a property within six months after the date on which certain no-fault notices to vacate have been given, with the option for a landlord to apply to VCAT to truncate this prohibition. Given that the relevant notices to vacate all have a notice period of 60 days, this effectively only restrains landlords from reletting properties for four months after a tenancy ends. In our experience, many tenants who receive notices to vacate under sections 255 and 258, in particular, believe that the grounds set out in the notice form a mere pretext for eviction. A longer prohibition on reletting after notice would tend to reduce the illegitimate use of such notices. The inclusion of section 255 notices under this section would encourage landlords to negotiate with tenants to see if arrangements can be made to continue a tenancy around necessary repairs, rather than moving immediately to eviction.

(f) Section 319(d) requires that a notice to vacate specify the reason or reasons the notice is given. In practice, the amount of information given by landlords to tenants on notices to vacate is highly inconsistent, often only restating the Act. With the exception of notices for danger, which are the subject of a Supreme Court decision in *Smith v Director of Housing*, the Tribunal has also been inconsistent in determining how much information as to the reason is required for a notice to vacate to be valid. However, without sufficient and clear information about the reason for the notice (for example, what repairs form the basis of a section 255 notice, and why it's not possible to complete the repairs while the tenant remains in possession), it is difficult or impossible for a tenant to decide whether the notice is valid, or whether they have a basis to challenge the notice.

(g) No-reason evictions are clearly and fundamentally incompatible with meaningful security of tenure. This is the case systematically, not just for individual tenants who receive them or landlords who issue them. The fact that a landlord can terminate a tenancy without having to state a reason tends to structure the field in

which tenancy relations are negotiated. This has wide-ranging implications; the sense that landlord entitlementeclipses tenants' right to housing, even for no reason, structures and overdetermines decisions made by landlords, agents, tenants, and decision makers such as the Victorian Civil and Administrative Tribunal.

When helping tenants challenge particular notices to vacate, HAAG workers have often been asked by landlords or agents why we would bother when they will just issue further notices until the tenant is evicted. Sometimes they even advance this as an argument before the Tribunal that particular notices which have been challenged should be allowed to stand – *we'll evict them sooner or later, so why not now?* The very broad eviction powers in the Act has also lead the Tribunal to consider eviction less of a hardship for tenants because of its inevitability.[1]

14. How much notice would be appropriate for the tenant to give to the landlord when providing a notice of intention to vacate?

HAAG considers that 28 days notice of intention to vacate, with exceptions for those entering social housing or aged care, etc., is a reasonable amount for most older tenants. However, with the ongoing shift from public housing towards non-profit social housing providers, we think it's important that the reduced, 14-day, notice period which currently applies to tenants who have received offers of public housing be extended to tenants who have received offers of social housing – as those tenants face the same time pressures, limited financial means, and potential serious hardship if they cannot quickly end a private tenancy as prospective public tenants.

15. How much notice would be appropriate for the landlord to give to the tenant when issuing a notice to vacate?

HAAG sees a large number of older tenants who have received 60-day notices, especially for repair and sale. These tenants frequently find that 60 days is not enough time for them to move, with reasons including limited mobility that makes it more difficult to view properties, limited computer skills or internet access making it harder to search for properties, and age-related disabilities and frailness that make packing and moving more difficult. Tenants who cannot access new private rental properties – because they cannot afford market rents, and/or because they require properties that are modified to meet their mobility needs, among other reasons – are also highly unlikely to access suitable social housing within 60 days.

A corollary problem is that it is unusual for real estate agents, in particular, to see the prescribed notice periods as minimums rather than normative expectations. HAAG housing workers frequently seek to negotiate with agents, pointing out that our clients simply will not be able to move within 60 days. Agents routinely reply with surprise, and respond as if there was something generous in their providing the minimum legal amount of notice.

[1] Heydon v Hallinbury Pty Ltd

We believe that in circumstances where no breach is alleged against the tenant, notice periods should be at least 90 or preferably 120 days.

17. Rather than relying on a notice to vacate for 'no specified reason', how could the Act cater for landlords with legitimate grounds for terminating a tenancy for reasons that are not otherwise prescribed?

In our view, this question is misconceived. The concept of a 'legitimate' basis for terminating a tenancy has no meaning outside of the legislation and dispute resolution framework that mediates between tenant and landlord interests. Reasons to terminate a tenancy are legitimate to the extent those reasons are prescribed, and no further; reasons that are not prescribed (presently including all reasons underlying no-reason notices) should be considered, as such, illegitimate. For example, the Community Housing Federation have suggested in their submission to the first stage of this review that two reasons no-reason notices should be retained are, first, situations where tenants cause danger to the landlord's staff (not currently covered by notices to vacate for danger, which relate to danger to neighbours), or to situations where a tenant is a danger to their neighbours but the landlord cannot prove this sufficiently to obtain a possession order.

Again, these suggestions are simply misconceived. A 120-day notice is in no way an appropriate recourse for a situation where serious criminal conduct and personal jeopardy is alleged. Existing forms of recourse – in particular, criminal charges and intervention orders – are much more suitable to such allegations than potential tenancy interventions (overseen by a Tribunal that is not bound by the rules of evidence and operates on a balance-of-probabilities standard of proof). And the idea that it should be a mechanism for evicting tenants *because* allegations against them can't be proven is, at best, counter-intuitive.

If there are reasons to terminate a tenancy that are not currently prescribed, but have become necessary, then those reasons should be prescribed – along with appropriate notice periods, and safeguards for tenants who may receive them unfairly or without basis.

19. What would be the impact of removing the notice to vacate for 'no specified reason' from the Act?

The key impact of removing no-reason notices from the Act would be to improve security of tenure. Security of tenure as such is simply incompatible with no-reason notices; insofar as tenants can be evicted without a reason, they will not have security of tenure. There is no other change to the RTA that would improve security of tenure more meaningfully than the removal of no-reason notices.

The removal of no-reason notices would significantly restrict the ability of landlords to use notices to vacate in a retaliatory way. This would, in turn, reduce barriers that make tenants reluctant to exercise their rights; low-income older tenants, in

particular, would have a greater freedom to seek repairs or enforce their right to quiet enjoyment with less fear of eviction. We also believe that the reduced recourse to eviction on the part of landlords would encourage negotiation, mediation, and other, alternative forms of dispute resolution.

Overall, the removal of no-reason notices would also remove or reduce the systematic bias in favour of eviction that structures tenancy relations in Victoria. Eviction would cease to be the inevitable outcome of all dispute and disagreement. Landlords, agents, and Tribunal members would increasingly treat eviction with appropriate seriousness, and as a mechanism of last resort.

Rent increases

20. What issues are there regarding the way in which provisions for rent increases in the Act affect security of tenure?

At present, the rent increase provisions of the Act provide fairly minimal protections for tenants. Fixed term tenancy agreements tend not to provide for rent increases during the fixed term and so form a stronger protection against rent increases – but this is a matter of common practice. Nothing prevents a landlord from offering tenancy agreements that allow or impose rent increases.

The greatest problem with current rent increase provisions from a tenant point of view is that they are effectively unrestricted – or only restricted by imprecisely defined 'market levels'. As market rents have tended over the last several decades to increase faster than the Consumer Price Index (**CPI**), this has tended overwhelmingly to increase levels of rental stress (in particular, for older tenants on Newstart, whose income only increases in line with CPI and who face levels of age discrimination that are likely to prevent them from returning to work).

For many tenants on fixed incomes, rent increases can constitute effective notices to vacate – an increase that shifts the rent from stressful to simply impossible to manage can force an end to the tenancy (and many older tenants report that they fear exactly this – not being evicted as such, but a high rent increase forcing a de facto eviction). Where a fixed term tenancy allows for rent increases, tenants may face a situation where they can neither afford to stay nor afford the lease-breaking costs they would incur if they were to leave.

21. What would be an appropriate alternative to the current frequency of allowable rent increases of no more than one every six months?

In HAAG's view, the major problem with rent increases is not the allowed frequency but the lack of serious regulation and oversight. If rent increases are appropriately regulated to prevent excessive increases, once every six months is an acceptable frequency. However, if landlords will be allowed broad discretion to set rents, older tenants will be seriously disadvantaged if rent increases continue to be permitted every six months. No more than annual increases to 'market levels' should be allowed.

22. What would be an appropriate alternative notice period for rent increases to the current 60 days?

For many older tenants, especially those reliant on income support, rent increases may constitute de facto notices to vacate. HAAG therefore believes notice periods for rent increases should coincide with the minimum notice period for no-fault notices to vacate – which we argue elsewhere should be set at no less than 90 days.

23. What would be an appropriate arrangement for rent increases during fixed term agreements to provide both tenants and landlords with certainty and choice?

HAAG strongly favours a limitation connecting rent increases to CPI. We believe this is the only possible arrangement if long-term leases are under serious consideration, as anything else will either leave tenants exposed to unaffordable increases that will force them to end tenancies prematurely, or, if rent increases are limited more severely, force landlords to initiate tenancies with very high rents to mitigate against the inability to increase them subsequently.

HAAG would favour a presumption that over any given two-year period, rent increases would not exceed the average CPI increase for that period, with the option for the landlord to seek to rebut that presumption based on either prescribed criteria or unforeseen hardship that would be greater than the tenant's hardship if the proposed increase proceeded. This would provide significant flexibility to landlords while also protecting tenants against excessive increases.

Repairs, maintenance and modifications

24. What issues are there regarding the way provisions for repairs, maintenance and modifications in the Act affect security of tenure?

For older tenants to achieve meaningful security of tenure, they must (a) be able to ensure that necessary repairs are completed in a timely fashion, and (b) be allowed to make reasonable modifications to the rented premises.

At present, the repair provisions of the Act provide a formally robust system for compelling a recalcitrant landlord to complete repairs. This includes applications to the Tribunal for urgent and non-urgent repairs, offences related to noncompliance with Tribunal orders, and the Tribunal's discretion to order compensation paid at a daily rate, and/or payment of rent into the Rent Special Account pending the completion of particular repairs.

However, in practice, the enforcement mechanisms are weak and slow. Even where a landlord has failed to comply with a repair order and the tenant has renewed their application, VCAT is very reluctant to make orders for rent to be paid into the Rent Special Account, or to award compensation at a daily rate pending completion of repairs. Where a landlord continues to fail to carry out repairs, it is likely to take a number of VCAT hearings before the Tribunal brings these mechanisms to bear. Some landlords appear to understand that they can 'wait out' the repairs process and that it's likely either the tenant will give up, or the tenancy will end, before effective orders are made.

Older tenants also face significant problems where they seek consent from the landlord to install disability modifications such as handrails or ramps, etc. At present the Act includes a duty provision which requires the tenant to obtain the landlord's consent before making such modifications. This is complicated by section 55 of the Equal Opportunity Act (**EOA**), which requires a person providing accommodation to allow a disabled person to make reasonable modifications to meet their medical needs. While this should protect older tenants who require modifications, problems can arise because:

- landlords and real estate agents are unfamiliar with the provisions of the Equal Opportunity Act and tend not to understand their obligations;
- where disputes arise, tenants can have trouble navigating the forms of advice, advocacy, and dispute resolution appropriate to tenancy and/or discrimination issues, and tenant advocates may also be unfamiliar with Equal Opportunity protections; and
- where a landlord serves a no-reason notice to vacate in response to a request from a disabled tenant to carry out disability modifications, the notice will tend to

be valid as the right to request modifications is not a right under the RTA, but under the EOA (and section 266 of the RTA only excludes no-reason notices based on the exercise of rights under the RTA).

How does the Residential Tenancies Act provide for security of tenure in rooming houses, caravan parks and residential parks

Caravan parks

Caravan parks provide a form of housing that tends to cater for people with lower income and asset levels. Permanent residents may reside in and own a dwelling (owner/renter) which often includes a caravan and an attached annex, or alternatively they may rent the dwelling and the site (renter/renter).

An owner/renter with only a caravan on wheels may easily drive out of the park if the need arises, but more often permanent residents live in dwellings that are much more difficult to move, usually due to the improvements and additions made to the dwelling over time. These caravans effectively become permanent structures. Renter/renters most often live in simple cabins or manufactured homes in the park that are usually owned by the park operator.

Caravan parks can provide a 'mixed use' environment, such as both permanent and tourist accommodation. Some parks have a higher percentage of tourists than permanent residents while some provide the opposite. Tourist dwellings are owned by the park and rented out for terms of less than 60 consecutive days. Some parks also contain dwellings that are owned by other people but only used as holiday accommodation.

Permanent residents in caravan parks were not recognised by law until as recently as 1986. "Local government planning authorities subsequently allowed traditional caravan park owners to designate a proportion of their sites as long-term"[2], creating what we now know as the 'mixed use park'.

Caravan parks have been defined as a marginal housing type, and there is "growing recognition that the demand… will intensify over the coming years because of the lack of affordable housing"[3]. However, many parks have closed due to higher profits being made from sale of well located, valuable land and residents often "fear potential closure and associated homelessness"[4].

According to Newton, indicators of happiness among caravan park residents included the length of time a person had stayed in the park on the same site, the ability to beautify their site and the safety felt by living within a park community. All of the above provided a sense of home to residents. This highlights the importance of security of tenure and also that the length of tenure is not the only important element when considering how to best provide security of tenure for caravan park residents.

[2] Bunce, 2010, p2
[3] Goodman et al, 2012, p2
[4] Ibid, p1

Living permanently in a caravan park is seen positively by residents when there is choice, quality amenities, strong community and quality management[5]. It was also noted that "many older residents who had chosen to live long-term in a caravan park for reasons of lifestyle choice… [T]heir long-term aspirations are to remain living in a caravan (park) for long as they are physically able"[6].

HAAG believes there are a number of key aspects to consider in relation to security of tenure for caravan park residents:

- Lease terms;
- Sale or closure of a park;
- Fear of repercussion for exercising rights;
- Termination provisions, especially the impact of the 'no specified reason' notice to vacate;
- Older dwellings and conditions of sale;
- Compensation provisions;
- Zoning of land; and
- Adaptability and accessibility for residents.

These are discussed in more detail below.

28. Is 60 days an appropriate period for a resident's arrangement to be automatically covered by the Act in the absence of a written agreement?

HAAG believes the 60 day unprotected period is not appropriate.

It is usually evident from the outset whether someone intends on staying long term in a caravan park or whether they are merely there transitionally. In the case of older people generally a choice to live permanently in a caravan park will be communicated clearly from the beginning.

Allowing for the 60 day period may discourage people from wanting to buy and move into a park, in case they are told to leave prior to the 60 days. This can then make it more difficult for residents to sell due to the uncertainty of the arrangement for the prospective resident.

One caravan park resident expressed concern that park operators may choose to ask someone to leave prior to the 60 days due to a dislike or unfavourable impression of the person and this was seen as an imbalance of power very much in favour of the operator.

There are no guidelines or instructions around this provision to ensure that any decision made by the park operator is reasonable and does not cause detriment or hardship to the resident. There is also no recourse for someone should they wish to challenge the decision, due to the Act not providing them with legal protection.

[5] Wensing et al, 2003, p7
[6] Ibid, p44

Rather than allowing for an unprotected 60 day period the Act should ensure that people who intend to remain in the park as permanent residents, with the park dwelling as their primary residence, should be automatically covered by the Act. It could make it easier if residents are provided with a standard agreement containing a prescribed lease term prior to their entry into the park which they can sign in order to be protected by the Act.

Where someone has communicated clearly that they are in the park as a tourist only, and therefore whose primary residence is NOT the park, the Act can make it clear that it does not apply.

In the event that a request is made by someone to transfer from a transitional arrangement to a permanent arrangement this may be something that requires reasonable consent from the park operator and an agreement to be signed to activate the protective provisions of the Act. It is important to also ensure that a refusal of consent can be challenged at VCAT.

29. What issues are there regarding the way in which security of tenure is provided for caravan park residents under the Act?

Security of tenure is not provided for under the Act for caravan park residents. There is no minimum term required to be given by caravan park operators, termination provisions are uncertain and often threats of eviction are made to dissuade residents from exercising their rights.

There are often no written agreements provided to permanent residents either which means that rights, roles, and responsibilities are not clearly defined, and no tenure is outlined. Most caravan park agreements are periodic and therefore susceptible to the protocols enforced by operators, which often limit and constrain residents' lives in the park.

Operators and managers in some caravan parks are difficult to deal with and can unfairly wield their power, leaving residents fearful of exercising their rights. Operators sometimes threaten residents with breach of duty notices and evictions to put residents off from exercising their rights.

The 120-day 'no specified reason' notice to vacate is sometimes used by operators to evict residents, even if the resident has done nothing to warrant eviction. This is an inequitable arrangement and further fuels the imbalance of power already experienced by caravan park residents. Even where a manager is clearly not fulfilling their duties under the Act residents are often hesitate to take action due to the possible repercussions.

Case Study:
HAAG has been working with residents of one caravan park over many years. Residents have had long-standing issues with the manager but have not been willing to take action for fear of eviction and victimisation.

Recently, residents contacted Consumer Affairs Victoria (CAV) about a rent increase they felt was excessive. Residents pointed out that no regular maintenance was being undertaken in the park and their use of communal facilities and amenities was restricted. The state of the roads was poor, the lighting was inadequate, and the rubbish bins were not cleaned regularly.

The residents could not communicate to the park managers, and many residents, especially single older women, felt uncomfortable going to the office on their own. Despite all this, some residents had alerted the managers to some of the work required, but their requests were met with silence and inaction.

The residents contacted HAAG. We assisted residents to organise meetings to discuss the best ways to assert their rights, and a decision was made to serve breach of duty notices. From a group of approximately 20 residents, only five were willing to put their names to the notices. Many residents were afraid that the managers would victimise them if they were to assert their rights.

The five notices were served and in response the managers sent a letter to those residents requesting a meeting to discuss the matter further. During this meeting, which the residents had reluctantly attended, one of the managers was present. This manager attempted to film the meeting despite strong objections from the residents present, who considered this a form of intimidation. The residents were then warned there would be consequences for them, and other residents, as a result of their actions. The manager then also verbally abused one of the residents present.

Following the meeting two of the five people who had served breach notices decided not to take any further action, including the resident who was verbally abused, for fear that there would be more serious repercussions such as eviction.

Residents tend not to have a strong sense of security, especially where management skills are weak, and at every turn they feel their tenure is at risk and refrain from doing anything to "upset the managers".

Caravan park residents, it often seems, "have fewer rights and protection than tenants in private rental and therefore occupancy is more precarious and less stable"[7]. They are very often a more vulnerable group with a fixed income, such as the age or disability pension. Iif they are forced to move there are few affordable housing options for them to choose from, and moving is costly and stressful, especially as you age.

For residents that own more traditional dwellings, such as a caravan and annex combination, there can be difficulties selling on-site to another permanent resident. HAAG has assisted on matters where residents have informed the park of their intention to sell and have been told they are not allowed to sell on-site. This means

[7] Goodman, 2012, p15

they can only sell to a buyer willing to transport the dwelling off the site. As explained above these types of constructions are difficult to dismantle and move.

HAAG has also assisted on matters where due to the age of the dwelling residents have received a 120 'no specified reason' notice to vacate.

These scenarios result in a financial loss for the residents. Moving is costly and difficult, especially for pensioners, and sites are not readily available to move to. The Act does not offer compensation provisions for these situations either.

Case study:
HAAG was contacted by a regional caravan park resident due to a breakdown in the relationship with the management. The resident decided she would sell her dwelling as she had decided to move out and into a more secure form of housing that became available. She relied solely on her age pension and had paid $20,000 three years prior, with assistance from her daughter, to purchase the dwelling.

Upon deciding to sell and informing the park she was told she was not allowed to sell her dwelling to remain on-site, as the park intended to build a newer Part 4A dwelling on the site to sell. When she originally moved into the park she was never informed she could not sell on-site.

HAAG attempted to assist the resident to negotiate, over the course of a few months, with the park to allow her to sell but they refused. A prospective buyer was willing to pay $10,000 but was refused by the managers to be allowed to live in the dwelling. Therefore the resident lost the sale.

As this situation unfolded the resident was paying two rents and struggling to make ends meet financially. Her health and well-being were significantly affected by this stress. HAAG wrote to the park requesting that they purchase the dwelling from the resident and take over possession of the dwelling due to the stress being placed on the resident to fight them over the matter. After not receiving a response to this request the resident decided to hand the keys over to the park and give up the dwelling so as to move forward in her life.

On the day she went to give in the keys to the managers she asked them once again whether they would buy her dwelling. They said would agree to give her $5000. This was a partial win but unfortunately by law the Act does not provide for this type of compensation, especially where someone is technically no longer a 'resident' in the park.

Case study:
HAAG assisted a resident who had lived in the park for 30 years and had been served with a 120-day 'no specific reason' notice to vacate. We discovered that the reason for the notice was the age of the dwelling. The park was beginning to upgrade their business and was moving into the more upmarket residential park sector, therefore asking residents with older dwellings to vacate the park.

This situation caused this resident significant distress due to the possibility of losing her home and having to move away from an environment she had been living in for 30 years. The resident decided to pre-emptively challenge the notice so as to be able to argue her case. She was made aware that success was doubtful as the notice was not served in response to her exercising her right and therefore the Act did not provide protection. Regardless she wanted to try.

HAAG assisted her to prepare for VCAT and because of the compassion of the VCAT member on the day some compensation was awarded. This type of decision is unheard of and the resident was lucky on the day.

In the case of a park closure, sale or change of use the Act does not protect residents. There have been many cases in the past of residents being given a notice to vacate for the sale and change of use of the park and there is no obligation that the operator provide compensation, or assist with relocation, to assist residents with the forced move.

There are also circumstances where security of tenure has been jeopardised due to how the caravan park land is zoned. Technically permanent living is not allowed on crown land and land managed by the Department of Environment and Primary Industries (DEPI) has similar restrictions.

Case Study:
HAAG assisted residents in one park where residents who lived on the boundaries of the adjacent river were on DEPI land, as well as crown land. Some residents had lived on their site in excess of 10 years. They were informed by park management that they must remove all chattels and improvements in the DEPI zone, must not add any more improvements and were not allowed to sell the dwelling to another permanent resident if they should decide to leave the park.

They had not been informed by the manager, upon purchasing the dwelling originally, that it was situated on land with these types of restrictions. HAAG was informed by the local Shire and DEPI staff that those government policies had been in place for a long while. It also emerged that the park manager was using these restrictions to target these residents prematurely as DEPI were clear they had not issued any orders to the manager.

After negotiations, DEPI assessed each site and made decisions based on individual circumstances but unfortunately due to the crown land issue all of those residents will lose significant value in their dwelling if they must leave and sell, all due to a lack of disclosure. The local Shire must also be held partially responsible for not being upfront about these conditions and for not holding the manager accountable for his lack of competence.

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. The response of management can also be vindictive if residents choose to pursue this course of action even though it is well within their right to do so. Park managers can be quick to serve notices to vacate for rent arrears but dislike having someone asses their practice and procedures in relation to setting the rent.

30. How can the needs for security of tenure for residents be appropriately balanced with the need to protect other residents' rights to peaceful enjoyment of shared spaces in caravan parks?

This can be achieved by:

- providing appropriate minimum lease terms with options for renewal;
- appropriate terminations provisions, such as extending notice periods and removing the 'no specified reason' notice, therefore only allowing eviction with clear reason and Tribunal order; and
- ensuring that park rules and responsibilities under the Act for all parties are provided to the residents and that they are consistently applied by managers and operators.

"Many park residents are not well informed regarding the few rights they do have and/or lack confidence in asserting them, especially because of their ongoing contact and reliance on management who they must confront to establish, or maintain, their rights"[8].

Managers and operators should be trained to understand what their roles and responsibilities are, to in turn be able to communicate this information to residents, and must be held accountable for their behaviour and attitudes. There should be clear provisions in the Act to deal directly with inappropriate conduct by managers, preferably with significant associated penalties.

Rules should be applied consistently and fairly so that residents can maintain security but also understand there are repercussions for behaviour that does not comply with the law. Residents should be able to exercise their rights without fear of eviction or retaliation, both from managers, operators and other residents. Removing the 'no specific reason' notice and providing minimum lease terms will assist with this.

Any attempt at eviction must clearly outline a reason to allow the resident an opportunity to defend their position.

[8] Ibid, p17

Further to ensuring security for caravan park residents, rent increases should be in line with CPI increases, especially for pensioners. The rent assessment guidelines for CAV should be amended to not focus so strongly on comparisons outside of the park but to assess whether all services are being appropriately provided and whether any improvements have been made in the park over the prior 12 month period.

Managers must be made to disclose information up front to residents about the rights and responsibilities of all parties, the status of the park, any zoning issues, and provide time to reflect over the agreement before signing.

Clear compensation and relocation provisions for forced evictions related to the age of a dwelling, sale, closure, or change of use to ensure residents do not experience disadvantage and hardship.

Caravan park environments must be accessible and adaptable to residents' needs, especially as they age and their mobility changes. This would ensure people can stay longer in their park residence and therefore also improves security of tenure.

31. Do the currently prescribed reasons and notice periods to terminate a caravan park resident's residency rights strike the right balance for security of tenure, and if not, what alternatives are appropriate?

It is interesting that some caravan park notice periods are less than regular tenancy periods. HAAG considers this inequitable and believes notice periods should be the same for renters no matter the housing type. However, if someone owns their dwelling then notice periods should be increased to take into account the added stress and responsibility of an arrangement that contains a form of ownership.

"Moving home is one of the most stressful experiences in anyone's life."[9] Much of the stress arises from having a lack of control over the decision to move, the uncertainty of where to move to and the loss of possible local supports. The health and well being of older people can be significantly affected as a result of having to move home.

HAAG members believe that termination periods for caravan park residents on a pension should be a minimum of 120 days if they are renter/renters and 6 months if they are owner/renters. This is in recognition of the vulnerability of the group and the potential impact a move can have over someone's overall quality of life and well-being.

[9] Stone, 2012

Residential parks

There is wide disparity across the residential park industry in terms of secure tenure, with some villages offering 99-year leases, others offering no fixed tenure at all, and some with wide variations in between. This is an industry that promotes housing for retirees and it should provide protection for a retired person's life-span.

Residential park residents, currently known as site tenants under the Act, own their 'transportable' dwelling and rent the site on which it stands. Many site tenants 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.

This failure of the residential village industry to offer sector-wide standards in secure tenure demands the need for legislative regulation and protection. Overall HAAG supports 30 to 50 year fixed lease terms to provide protection for site tenants through their retirement years. This needs to be considered alongside other aspects of legislation and regulation though to ensure security is truly understood in a residential park environment.

HAAG believes that residential parks require stand-alone legislation. It is no longer appropriate to include them in the Act any longer. It would also not be appropriate to try to include them within the Retirement Villages Act (RVA). Owner/renter arrangements in residential villages are different to leasehold and strata title arrangements in retirement villages therefore the unique and complex model provided in residential villages requires its own legislative considerations.
There are a number of aspects to consider when reflecting on security of tenure in residential parks that target their product towards people over 55 years of age, such as:

- The lease term provided;
- Affordability in relation to site fees and other charges, including exit fees;
- Unit and park design, accessibility and adaptability; and
- Responsibilities regarding site repairs and maintenance.

32. What issues are there regarding the way in which security of tenure is provided for residents of residential parks under the Act?

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, with five-year minimum lease terms, but no protection for existing site tenants. This is not adequate security of tenure and means operators are free to decide the level of security they will provide. Although long term leases are now standard practice with some of the larger operators in Victoria, security of tenure is still limited with a lack of

consistency across the sector. Given this type of housing arrangement is targeted as permanent retirement living for older people, security of tenure is a key issue.

Moving is more difficult as people age and feelings of insecurity can adversely affect the health and well being of older people. Research suggests that the affordability and suitability of housing and security of tenure can have an impact on health. "People in precarious housing had, on average, worse health than people who were not precariously housed. This relationship existed regardless of income, employment, education, occupation and other demographic factors"[10].

Due to the significant investment made by site tenants to own a transportable dwelling in a residential park, having no security and having provisions in the Act that allow for eviction creates a precarious situation where people might have to pay high costs to move, along with difficulties finding another site to live on. It must be made clear that eviction under Part 4A means the site tenant, as well as the dwelling, must be removed off the site and out of the park.

Part 4A still includes a 'no reason' notice to vacate. Although an extended notice period was introduced (from 120 days to 365 days), a provision that allows for eviction without cause will never allow site tenants to feel secure.

That being said, currently when a site tenant has a fixed term agreement most notices to vacate must have termination dates outside of the fixed term. This does afford people some level of security but mostly when leases are long term and there is no standard industry practice at this time. There are still many site tenants across the state susceptible to eviction without compensation.

There are no clear compensation provisions provided in the Act, which means site tenants will generally have to bear the costs of moving themselves even if the circumstances are through no fault of theirs.

What the Act does not address at all is the sale of a residential park. Currently even with long term leases upon the sale of a park previous site agreements are not binding on the new site owner. Site tenants may be asked to leave if there is to be a change of use or redevelopment of the land and also if the park becomes insolvent. A study found "the possibility of eviction if the park was sold for redevelopment was concerning to 70 per cent of respondents"[11]. This concern affected the health and well being of residents.

The Act also does not provide security in the event that a park has both a freehold land owner and a leasehold company owner. If the two parties have conflicting intentions in relation to the future of a park this may be detrimental to the security of the site tenants. This arrangement has been overlooked and misunderstood when it comes to the rights of site tenants.

[10] Mallett et al, 2011, p5
[11] Bunce, 2010, p8

Case study:
HAAG worked with residents in one park, and assisted them to access legal support, to negotiate site agreements with a fixed lease term at the time that Part 4A came into effect. This particular park has a freehold property owner and a leasehold business owner managing the park. It was made clear by the property owner that he bought the park as an investment. The park is in a prime coastal location and the value of the land would be significant.

At the time of negotiations the site tenants, most in their 70's and 80's, were offered 6 year leases in line with the contract lease term provided to the leaseholder by the property owner. Attempts were made to extend this offer, through the property owners legal representatives, but he rejected the request.

At this point in time site tenants at this park have approximately two years left of their leases with no clarity about whether this will be extended. Potentially the property owner could decide to sell the land to a developer, or redevelop it himself, and this would result in the site tenants being evicted with no where to take their dwellings.

Security of tenure is also reflected in the affordability of living in a park. Those site tenants relying solely on a pension are concerned they will not be able to afford living in their residential park long-term because of the rising costs.

Site fees are usually increased annually, although sometimes every six months, and often according to market review. The Act allows for six-monthly increases. At the same time, utility costs are steadily climbing and the nature of many electrical embedded networks in parks provides for very little protection should a site tenant wish to challenge their bills. Sometimes other fees are charged by parks, such as visitor's fees, which also place a financial burden on site tenants.

The thought of selling a moveable dwelling places further financial stress on older people due to the often associated exit fees, such as Deferred Management Fees (**DMFs**), sales commission, administration costs, refurbishment costs and continued liability to pay site fees if the site tenant has vacated their dwelling but has not yet sold the premises. Many of these fees are becoming common practice in the industry and yet the Act does not mention many of these added costs, and therefore there are no protective provisions in place for site tenants in regards to these costs.

The security of tenure issues paper indicates that "someone with a high degree of security of tenure in rental accommodation is likely to:

- Have a choice to stay or leave;
- Have legal protections regarding their tenancy;
- Pay a sustainable rent; and
- Have certainty that the property will be maintained".

Currently site tenants have limited choice to stay or leave due to the difficulties sometimes associated with selling a dwelling, the exit fees involved in leaving a residential park and the lack of affordable housing options available.

Moveable dwellings are built with a somewhat standard design and manufacturers, often the park operator is also the manufacturer, do not take into account the target market for this type of living. Dwellings are not made with older people in mind and are not built to be accessible and adaptable.

Residential park environments are also not always designed with the target market in mind. The common areas and facilities also need to provide for accessibility and adaptability for those with mobility issues and disabilities. Accessibility and adaptability will support a site tenant's security of tenure by enabling them to remain in the park, and live independently, for longer.

33. What is an appropriate level of security of tenure for residents of residential parks, and how could the regulation provide for this?

Standalone legislation that provides 30 to 50 year leases would be an appropriate level of security for site tenants. HAAG members also believe the 'no specified reason' notice to vacate must removed. With a prescribed fixed term lease a 'no reason' notice is unnecessary. There are always reasons for termination and eviction should only occur with an appropriate reason and a VCAT order.

Provisions must be included to address the sale and/or change of use of a park so that agreements were binding on any subsequent owner of the park. Closure, insolvency and bankruptcy must also be addressed with strong compensation provisions to ensure site tenants are not disadvantaged by circumstances beyond their control and that the value of their home, and legal arrangement, is recognised. Any termination periods related to these situations should also allow a minimum of 24 months for site tenants to organise their affairs.

The zoning of residential park land could also assist to provide security of tenure. In the United Kingdom (UK) "lack of secure tenure has been addressed through the permanent zoning of residential parks"[12] and residents can stay on their site indefinitely. This means dwellings can appreciate in value because of their permanent occupation of the site.

The current model of residential park living in Victoria distinctly separates the dwelling and the site, and yet the dwelling has little value if you exclude the site. The value is found in the location on-site within a residential park and providing security of tenure possibly through permanent residential zoning would allow this value to be realised. This would be beneficial for site tenants as well as for the ongoing viability of the park business.

[12] Ibid, p9

Security should be inherent in this housing model. Residential park arrangements are complex and becoming even more so as the sector grows. One Victorian residential park company makes in excess of $16 million dollars profit each year and provides long-term security within their model. It is a lucrative business model and this particular company has been said to be "in a structural sweet spot"[13]. Victoria is still a fairly small market compared with states like NSW and QLD and there is minimal competition at this time within the Victorian market although, other investors are beginning to enter the market.

For older people on a pension, any fee and cost formulas used by residential park operators need to ensure park living remains sustainable long term and therefore secure, considering this is the target group. Currently the Act does not provide any clear formula for rent increases and allows for market-based rent reviews, which can often place financial stress on site tenants.

Standalone legislation could take into account rent and fee protection for site tenants by providing limits on rent increases. HAAG members have expressed that the CPI or 5%, whichever is the lesser, is a reasonable and fair formula for site fee increases.

Although there is a provision in place allowing site tenants to seek assessment from CAV should they believe their increase is excessive, it rarely works in their favour and often the assessment is made using inappropriate comparisons. One residential park engaged CAV to undertake a rent assessment and the report included a comparison with a retirement village – a completely different type of accommodation. The assessment criteria need to take other parks into account less and focus more on whether improvements were undertaken in the park over the previous 12 months, whether services are being appropriately provided within the park (such as the maintenance of common areas and facilities), and the hardship or disadvantage an increase might cause to pensioners' rental affordability.

Residential park legislation also needs to address other costs that may place a burden on site tenants, such as visitor's fees.

Exit fees, such as DMFs, administration fees and sales commission 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. In HAAG's view, security of tenure refers not just to the ability to avoid premature exit, but the broader ability to make decisions about when and in what circumstances a tenancy ends. In this sense, DMFs can sharply restrict security of tenure.

DMFs are not regulated by the Act. 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. The

[13] Patersons, 2014, p33

Act needs to provide clear and reasonable formulas for DMFs and site fee increases.

HAAG members have expressed that they would like to remove DMFs completely. As no doubt the industry will challenge this, HAAG members have stated that providing a legislated capped amount on DMFs, with clear explanation as to the purpose, might be appropriate and reasonable. The UK model allows operators to charge up to 10% commission on the selling price of the dwelling, while also allowing site tenants to pass on inheritance rights, as per any other property ownership arrangement, and the right to gift their dwelling to a family member.

HAAG members agreed that 10% would be a reasonable cap on a DMF, without allowing for further administration costs, but that it should be taken from the purchase price of the dwelling so that site tenants can benefit from capital gains. Regulating these costs will ensure site tenants have the choice to stay or leave a park without the current associated financial stress.

Currently dwellings can be modified on the inside by the site tenant as they please. This comes at extra cost because the original design of this housing is not very accessible from the outset. The majority of dwellings have steps upon entry, narrow doorways throughout and are not designed for disability access or ambulance stretcher access. Residential park living is targeted at people over 55 years of age and needs to consider the changes to mobility and health that occur with age, especially consideration of 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, if the design allows for it.

There are other concerns 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 move safely throughout the park. At times, communal facilities do not provide ramp or flat level entry and can often be built without rails.

For an older person to be able to live independently and age in place, moveable dwellings, park facilities and the overall park environment must be adaptable and accessible to provide for added security. The regulations must address this and standalone legislation would provide an appropriate means through which to do this. Without these provisions in place, site tenants who cannot sustain their lifestyle due to a lack of access will continue to lack secure tenure.

34. What are the reasons residential park operators use the 365-day 'no specified reason' notice to vacate?

In all the cases HAAG has seen in residential parks, park operators have used no-reason notices to vacate in a retaliatory manner, targeting site tenants who have exercised or sought to exercise their rights.

Case study:
One couple living in a residential park decided to try and organise a residents meeting on-site, around the time Part 4A came into effect, to let HAAG talk both about Part 4A and about how to form a residents committee. Directly after the meeting the couple received a no-reason notice to vacate. It was struck out as it could clearly be shown it was served in retaliation, but this caused the relationship to severely break down between the couple and the park operator. This meant the couple moved out anyway.

Case study:
One site tenant was having issues with the bills being issued by the park in relation to her gas bottles. There was a dispute about the amount owing and HAAG assisted the site tenant to prove to the manager there was no money owing. While the HAAG advocate was still on-site the manager called the site tenant into the office and served her with a no-reason notice to vacate. Again it could clearly be shown it was retaliatory and it was struck out.

It is important to consider what would have happened if either of these site tenants had lacked access to appropriate advice and advocacy and so been forced to vacate the park. A possession order would result in the site tenants having to move their dwelling off the site. This would be extremely costly, stressful and difficult to negotiate. Even though the dwellings are technically transportable, in practice this is extraordinarily difficult.

35. What would be the impact of removing the option for residential park operators to issue a 'no specified reason' notice to vacate to site tenants?

If an operator has decided to serve a notice to vacate there will always be an underlying reason. Removing the no-specified reason notice to vacate would require that termination could only be undertaken on appropriate grounds. This makes an operator accountable for their decision and would significantly increase security of tenure for residents.

In New South Wales and Queensland 'no reason' termination is not permitted in relation to 'home owners' (which is the equivalent of site tenants).

Currently unless a no-reason notice can be directly linked to an operator retaliating against a site tenant exercising their rights it is near impossible to challenge. This provides a very inequitable advantage to the operator and disempowers the site tenant significantly.

In the UK the *Mobile Homes Act 1983* specifies that "in all instances the park owner can only terminate the tenancy and evict the occupant by a court order"[14]. This is why a reason should always be provided for grounds to evict in order that site tenants have fair and equitable access to justice to challenge any decision made by the operator that directly affects their welfare.

If you consider what the impact of a no-reason notice would be on a site tenant, versus the impact on an operator, HAAG believes this notice places more hardship and disadvantage on the site tenant than it does on the site owner.

36. Rather than relying on a notice to vacate for 'no specified reason', how could the Act cater for residential park operators with legitimate grounds for terminating a site agreement for reasons that are not otherwise prescribed?

It is difficult to ensure that every scenario could be prescribed in the Act to provide reasonable grounds for termination. The Act could include a provision allowing operators to take a matter to VCAT, under general application, where they believe there are grounds to evict whereby they would need to show the detriment or hardship to them if eviction was not granted.

Compared to the UK and Northern Ireland, termination provisions in Victoria cover an already wide ranging series of scenarios. In their *Mobiles Homes Act 1983* and the *Caravans Act 2011* there are only three grounds on which an agreement may be terminated:

- If the site tenant has breached the terms of their agreement;
- If the dwelling is not the site tenant's primary place of residence; or
- If the condition of the dwelling is detrimental to the overall amenity of the park.

HAAG members would prefer a more limited list of termination provisions, such as those in the UK, and argue that for an age-specific form of housing it is not unreasonable to request this. The RVA only allows for termination if the resident can no longer live independently or if they breach their contract, and this is more in line with what HAAG members believe is reasonable.

37. What are the impediments to site tenants moving from residential parks once they have committed to a fixed term agreement?

Exit fees, as described above, are an impediment. The liability for site tenants to pay ongoing site fees is also a significant obstacle but if a site tenant passes away or moves into residential care they have no choice. Although technically the Act currently limits that liability to 12 months it is contained in an obscure part of the Act and is prescribed in a compensation provisions available to the site owner.

[14] Bunce, 2010, p10

HAAG members believe this liability should be prescribed clearly and limit payment to six months, until a new owner takes possession, or the end of a lease term – whichever is the lesser.

The process of sale can be difficult and can deter people from moving. Although Part 4A allows site tenants to appoint independent agents, in practice operators can obstruct this process. Legislation needs to clearly state that operators must not refuse an agent entry into the park and that 'open for inspections' be allowed. Dwellings should also always be valued independently, but the real estate agent industry may need education about the sector as not many agents understand it.

HAAG members have also said where a park operator is appointed to act as agent there should be provisions that make it mandatory for updates to be provided to the site tenant about the sale process, therefore holding them accountable and ensuring they put time and energy into selling as quickly as possible.

Appendix: Independent living Units and Rental Villages

In addition to the forms of accommodation covered above, there are two major forms of rental housing for older people which we believe deserve independent consideration: Independent Living Units (ILUs) and rental villages.

Independent Living Units

ILUs are self-contained units built specifically for older people with low income and low assets. During the 1950s the Australian Government passed the Aged Persons Homes Act (APHA), which funded churches, charities, and not-for-profit organisations to provide housing for older people. During the 1980s funding provided under APHA ceased.

As a result, two models of ILUs have developed over time: those covered by the RVA and those covered by the cpi. This submission addresses the arrangements provided in ILUs governed by the RTA.

ILUs continue to be provided as a mostly affordable and relatively secure form of housing specifically for older people, although these informal protections could be more appropriately legislated. According to McNelis, 42% of ILU residents were aged 80 or over[15]. If considered in relation to other forms of low-income, older-person-specific rental housing, of which public and community housing are major forms, in 2003 ILUs formed "25 to 30 per cent of all stock specifically constructed for older persons"[16].

ILU tenants are a more vulnerable group and "older people are one of the least mobile population groups"[17]. The concept of 'home' is important to older people. In research conducted about rental housing provision for older Australians it was found that "the vast majority were seeking permanency and viewed their rental housing very much as 'home'. Most had no plans to move with some suggesting that moving would be a terrible blow"[18].

Security of tenure was identified as a core issue for older renters in all rental housing types. For ILUs, and in particular those located in inner-city areas, the value of land was seen as a significant threat to long term tenure.

Although ILUs are provided specifically to older people on the premise that people can live there indefinitely, the RTA does not specifically protect security of tenure for ILU tenants. ILU rental arrangements are currently dealt with in the same way as private rental and the age-specific nature of ILUs is not currently taken into account in the Act.

[15] McNelis, 2004, p49
[16] McNelis, 2003, p13
[17] Jones et al, 2007, p43
[18] Ibid, p74

It must also be noted that often ILU tenants do not have agreements in writing, and where they do exist they are generally simple and lack any detailed explanation of rights and responsibilities under the RTA. Sometimes providers themselves are unclear about their responsibilities under the Act or even which act(s) they must comply with, which adds unnecessary complexities. Having standard ILU rental agreements would assist providers as well as tenants to understand their rights and responsibilities.

Without legislated security, tenants are still vulnerable to eviction. Alongside the concerns relevant to all tenants, what are particularly prevalent in the ILU sector are evictions due to sale, closure, demolition, and re-development.

ILUs were built between the 1950s and the 1980s and therefore the stock is ageing. Some ILU providers are facing major challenges in this area. "The state of the current stock, the potential for upgrade, conversion/extension, the availability of capital finance are important issues to the future of this housing stock and its potential to provide housing for older people with low incomes and low assets"[19].

Security of tenure for ILU tenants is affected by the long-term viability, accessibility and adaptability of this housing model. A number of organisations, especially in Victoria, have already withdrawn from the provision of ILUs and this continues to be a concern for the security of the tenants affected.

The Act must make it mandatory for an ILU provider to provide accessible and adaptable housing based on the age-specific nature of the model, or alternatively to modify units and village environments on a needs basis. HAAG members believe that the Act must require that where an assessment made by a medical practitioner states there is a requirement for modification it must be addressed by the ILU provider, and that a tenant able to fund their own modifications must not be unreasonably refused.

The Act must also consider the security of an ILU tenant in the event of a sale, closure or redevelopment to ensure any current agreements are honoured and the tenant is not left homeless. ILU providers should be responsible by law to provide relocation assistance to tenants should they plan a forced eviction due to sale, closure, demolition or re-development.

HAAG members also believed 5 to 10 year leases for ILUs were reasonable, with a legislated option to renew which is decided by the tenant.

Recalling that organisations original received government subsidies to provide housing for older people, both state and federal governments need to reconsider supporting these organisations to maintain and develop their current housing stock. In the overall spectrum of affordable older persons housing, the options are limited and the loss of this important housing type would place more pressure on a system already in crisis.

[19] McNelis, 2003, p16

Case study:
Tenants living in a small cluster of 10 units in a Bayside location managed by the local council were given 120 day 'no specified reason' notices to vacate. The stock was ageing and the council did not understand how to properly manage the ILUs resulting in the inability to maintain the units any longer. The units were located in a prime location on land that was high in value and the council had decided to sell.

This proposal was met with community uproar and after many months of advocacy from HAAG and community members, the council decided to sell to an organisation that would continue to provide affordable housing for older people. Once the new owner took over they decided to redevelop, which meant the tenants still had to move out of the units, at least for a short while.

This resulted in a nightmare relocation process that placed significant stress on the tenants, who were aged within their 70s, 80s, and 90s, some having lived in the units for 15 to 20 years. The health and wellbeing of each tenant was impacted and the process was inconsistent and unclear due to a lack of regulation and guidelines prescribing a clear process.

Rental affordability and protection is also important for ILU residents in relation to security of tenure. 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.

In general rent in ILUs is provided at "below both housing stress and public housing rates"[20] but also sometimes provided at the same or similar levels to public housing. Unfortunately this is not legislated and therefore currently an ILU provider is not required to maintain those low levels of rent.

ILU rent could still be susceptible to market reviews which may make this unaffordable for older people on a fixed income, and therefore insecure. HAAG members believe rent increases should be formulated according to CPI increases, or according to 25% of income as per the pubic housing formula, to ensure this remains a financially viable option for pensioners and for providers.

Rental villages

Rental villages, operated by private companies, are targeted to age 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. This is an area of housing that has been overlooked for a long time and there is little research on tenants in this housing type.

[20] Bridge, 2011, p78

For rental village tenants "there are concerns around regulation and tenant protection, scale and institutional environments, quality of support offered, and high levels of rent which may leave residents with insufficient money for social participation and housing mobility"[21].

Rental village tenants tend to be aged within their 80s and 90s due to the appeal of a balance between assisted living with support services, as well as independence. "The provision of meals and heavy laundry and the lack of maintenance were highly valued"[22], as were safety, security and control.

Some operators provide 12 month agreements but most provide periodic agreements which are often not in writing. This means tenants are vulnerable to eviction and for those over the age of 80, the lack of security can be stressful and detrimental to their health. Lack of security also significantly deters people from exercising their rights and the 120 day 'no specified reason' notice to vacate exacerbate the sense of unease tenants feel.

Case study:
HAAG assisted a group of tenants in a rental village in relation to the bullying they experienced from management, along with false accusations of rent arrears, failure to register bonds with the Residential Tenancies Bond Authority and failure to provide certain services and maintenance.

After providing information to the tenants about their rights many did not want to follow through with action as they feared being evicted, which had been threatened by the management, and feared being victimised, which had already begun to happen. Tenants in the village were fairly frail and were, on average, aged in their 80s.

The situation was more complex because the manager was not the owner of the units and the landlords themselves were taking court action against the manager, producing complexities that were extremely difficult for tenants to navigate.

Unfortunately the RTA does not provide legislated security of tenure for rental villages. Similar to ILUs, due to the age-specific model the Act should ensure security of tenure is provided. Most tenants view rental villages as their "final home"[23] and the legislation should reflect this intention.

Sale, closure, or change-of-use termination provisions need to be considered differently with this particular group. Tenants in their 80s and 90s face remarkable hardship and detriment if they are required to relocate. There should be requirements in the Act for the operator to relocate the residents in the event of a sale, or for the new owner to be bound by the conditions of the previous owner's agreements.

[21] Jones, 2007, p47
[22] Ibid, p58
[23] Ibid, p58

Case study:
A 99-year-old tenant of a rental village was given a notice to vacate due to the sale of the units. The managing company was changing their housing model and were asking tenants to leave to replace them with people buying (rather than renting) the units. This tenant had lived locally for many years and the thought of moving was causing him significant stress.

The village did sell to another company and now again the small number of tenants left are being told they must relocate as now the village is being turned into a care facility where people buy their units and receive a package of services. HAAG is working with a few tenants, aged from their late 80s to mid 90s, to ensure that any relocation process is undertaken with care and consideration for the tenants needs. Unfortunately the Act does not protect tenants in this type of situation.

Another impact on security of tenure is the affordability and suitability of the housing. A rent set at 85% of income plus 100% rent assistance results in severe housing stress for tenants if they rely solely on their pension, as many do, and can only be sustainable if someone has savings to draw from.

Research conducted by AHURI found that "affordability was a concern for those who did not have additional income or assets on top of the age pension"[24]. After other out-of pocket expenses "residents talked about cutting back on the costs of entertainment, social activities, medicines and shampoo and of not being able to afford to run a car"[25].

One tenant stated, "The rents are excessive. You need enough left for electricity, phone, doctors." Another said, "I've been in the position where I couldn't afford to have a prescription made up"[26]. Given this form of housing is provided for older people, rent should be set at a more reasonable level, with rent increases being calculated according to CPI increase and not market 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 therefore providing tenants with choice. Currently tenants must continue paying for services even if they are not receiving them, for example while hospitalised, or if they do not require them. Often there is no clear agreement that sets out the rights and responsibilities in relation to service provision which causes confusion and can disadvantage tenants financially.

Units are fairly well designed to accommodate older people with walkers and scooters but external village environments are often not designed appropriately. Winding paths and steep inclines can make it difficult for tenants to manoeuvre

[24] Bridge, 2011, p79
[25] Jones, 2007, p59
[26] Ibid, p59

their way through the village and can limit their use of communal facilities as well as their mobility in and out of the village. Modification provisions should again apply to this form of housing, as outlined above in relation to ILUs.

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