

Residential parks roundtable: summary report

Acknowledgement of Country

The Commissioner for Residential Tenancies (the Commissioner) and Housing for the Aged Action Group (HAAG) proudly acknowledge Victoria's First Nations peoples and their ongoing strength in practising the world's oldest living culture. We acknowledge the Traditional Owners' lands and waters on which we live and work, and pay our respects to their Elders past, present and emerging. We acknowledge their sovereignty was never ceded.

Thanks to residents

The Commissioner and HAAG acknowledge and thank residential park residents that participated in this roundtable event, as well as those that have previously come forward to tell both government and community agencies about their experience in residential parks. We acknowledge that there are many challenges faced by residents and commit to advocating for change.

Background

In August 2022, the Commissioner and HAAG co-hosted a residential parks roundtable (the roundtable) to hear from residents in Victoria about their experiences of living in residential parks. Further background on the roundtable is at Appendix 1.

Residential parks

Residential parks are areas of land where people purchase dwellings or units but rent the sites the dwellings occupy, and in Victoria are covered under Part 4A of the *Residential Tenancies Act 1997*. The dwellings are theoretically moveable, but in practice moving them is almost impossible for logistical and cost reasons. Residential park dwellings and the parks themselves vary greatly in size, style and quality. Many residential parks are in caravan parks or former caravan parks, but they can also be purpose-built. Residential parks generally contain common areas or facilities for residents to use. Many residential parks are intended exclusively for retirement-age residents. There are also newer parks which target marketing to the 45+ year old cohort. Residential parks are sometimes referred to as residential villages or lifestyle parks and can be similar to retirement villages.

Issues and proposed solutions

The following provides summarised feedback received from residents at the roundtable, some direct quotations, and proposed solutions to issues from residents. Participants have been deidentified. There was significant overlap across topics covered.

Contracts

Many residents said that the contracts they were offered were quite complex with legalese, lacked transparency and were not explained clearly. There was also inadequate or no expert support to help understand and guide contract negotiations. Residents described this as a power imbalance, whereby the operator/site manager is more knowledgeable about their rights and contract terms and conditions, have access to legal advice where necessary, and thus have an advantage in any negotiation. This can be problematic for many reasons, mainly because residents often find out later about unfair terms and conditions. For example, there have been lots of reports about issues with deferred management fees (DMFs), which is covered in more detail in the below fees and charges section.

Another reported issue is that often there is a sense of pressure and urgency to sign the contract, and what is verbally exchanged in the sales pitch is misleading and does not match what is in the contract. This can be problematic when operators/site managers attempt to enforce contract stipulations which conflict with a resident's understanding of the contract, based on what was explained to them upfront.

It is difficult for residents to seek expert help with contracts. For example, many residents reported seeking legal support to review their contract, but this was an issue because there was no technical expertise on residential parks. Residents reported that the Law Institute of Victoria, the peak body for the Victorian legal profession with over 18,000 lawyers, has stated it is unable to support residents due to the lack of expertise on residential parks. Other residents reported obtaining legal advice that later proved to be wrong, or finding that the cost of obtaining legal advice was prohibitive.

The other main issues that residents reported are around clarification of roles and responsibilities, especially when it comes to repairs and maintenance, and the diversity of tenure and other stipulations in contracts, which can leave some people in precarious living situations and often means people are treated differently according to their own contractual arrangements. Issues with repairs and maintenance are covered in more detail below. Regarding the diversity of tenure in contracts, residents reported that they have seen contracts negotiated from 1-99 years.

Quotes from residents

"About ten years ago when I first came into the village, the manager sat us down with an enquiry pack that explained the fees, without the detail about formulas used. And that was all good, I took that information to my financial adviser and it was not a great deal of concern for me personally. Over the years, for residents that have come in, the detail seems to have been lost at the front ball, so they don't seem to get an enquiry pack and receive advice or get told where to seek advice. The detail is missing, which is a concern for people... this seems widespread and the major concern is the DMF."

"We were given the lease on the day we were meant to sign it. You're meant to be given 20 days to look at it. We were sitting at the desk with the owner and the manager, and we had to try and read it then. And also we were given a piece of paper and they said "oh, sign this too" – and it's a piece of paper to say we have to sell it back through them. And you're

sitting there with your truck full of furniture, there's lots of pressure and it's not explained clearly."

To the question of whether contracts had been reviewed and compared: "Yes, we have – there are many changes, some are not easy to understand. My agreement is 13 years old and is very different to a new one. Some changes are good but overall other changes can be read as ambiguous."

"Some people now need to be looked after by other residents because they didn't know what they were getting into."

"People go to speak to the sales staff to move in, and assume that the staff are knowledgeable and trustworthy, and don't think that they need to seek much further advice."

"I sought legal advice and he said it seems like a normal lease."

"The RTA [Residential Tenancies Act 1997] supersedes our contracts but the clauses under Part 4A [of the RTA] are not easy to follow and difficult to analyse or interpret."

Proposed solutions from residents

Many residents said that there should be:

- expert support services, including training for lawyers/agencies on Part 4A [residential] Parks, to review contracts, inform residents about their rights and clarify potentially unfair terms and conditions such as DMFs
- training for operators/site managers to clearly explain contracts
- standardised, clear and plain language contracts with guides that provide stronger security of tenure (i.e. 99 year leases) and the same rights for all, with some flexibility for particular circumstances such as agreed modifications for residents who need them. One resident suggested that standardisation of contracts needs to occur at the federal level so that the law applies across Australia
- an independent person present or review procedure for signing a contract, and
- longer cooling off periods to consider the contract.

Dispute resolution

Issues in residential parks are diverse, and when they are unable to be resolved may require a third-party or parties to step-in to provide dispute resolution. Regardless of the adequacy of a dispute resolution process within any given residential park or that which is externally available, such as through courts and tribunals or Consumer Affairs Victoria (CAV), commentary from residents was that many residents are older and often in various states of declining health, so attempting to raise an issue through to resolution can be a daunting if not impossible task.

Compounding this, many residents reported feeling hesitant about raising any issue at all, even if they felt capable of following a dispute resolution process. This was often due to fear of intimidation and retaliation by operators/site managers, based on personal experience or the experience of others. There were many reports of threatening behaviour by

operators/site managers against residents who spoke up about issues. For example, eviction was a common threat to deter the raising of issues, even when there was no legal basis for an eviction. Others were also fearful that raising issues would count against them in future in some way, such as when seeking alternative accommodation or seeking to sell their dwellings. Many asserted that there is elder abuse occurring at their sites.

There are a range of other factors that residents reported which further compound the issue of internal dispute resolution, including that often:

- there is no formal dispute resolution procedure and the ability to resolve issues is generally at the discretion of the operator/site manager to decide
- there is the perception that raising an issue makes you a 'troublemaker', which may cause social isolation from other residents
- the dispute resolution process is blurred and confusing. This can arise when there is contract variation within any given site that stipulates differences in dispute resolution procedure
- individuals or groups within residential parks can 'splinter off' around how to approach the resolution of an issue
- there was a lack of ability and capacity of operators/site managers to respond to issues, especially if issues were specific to older people with particular needs
- there is no resident committee to spearhead collective action. Or, where there is one, this does not resolve anything if the operator/site manager is unwilling to address the issue, even if this conflicts with the law (i.e. statutory timelines for repairs)
- there is no external legal expertise with residential park specific knowledge to support dispute resolution
- there is difficulty with understanding legal rights due to legislative complexity and the lack of guidance material
- there is blatant disregard for the law by operators/site managers
- there is a lack of care including responsiveness by operators/site managers which means things are not dealt with in a timely manner, often in conflict with statutory timelines
- operators/site managers change which can bring new ways of resolving issues/disputes, often which are not communicated clearly, or the new operator/site manager is difficult to work with. The high turnover also means that established relationships are lost and historical context around issues often not handed over
- operators/site managers can be unwilling to make modifications to support older people, i.e. the need for ramps versus stairs
- issues are not always passed on by managers to the owner-operator for a decision, and the owner-operator is often unwilling to meet with residents
- owner-operators may offer things that are not asked for versus resolving an issue, and
- there is a reluctance to mediate disputes between residents, even where a contract states that the operators/site managers will provide this service. This can significantly impact peaceful enjoyment, especially when conflict between residents intensifies.

External forms of dispute resolution, such as through courts and tribunals or CAV, were perceived as inadequate and not fit-for-purpose.

The main commentary on the use of the Victorian Civil and Administrative Tribunal (VCAT) to resolve issues was that:

- it is onerous and costly and should not be necessary to address minor issues. VCAT does not meet the needs of the majority of residential parks residents who are older people
- often issues are resolved outside of VCAT, which means that case law is thin, and learnings cannot be utilised in newer cases
- there is the perception that VCAT has a poor understanding of residential parks law, with some examples of confusion by VCAT Members, and
- there is often a power imbalance, as owners/site managers can afford lawyers and to drag cases out, and residents cannot.

The main commentary on the use of CAV to resolve issues was that:

- CAV has limited power and decisions are not binding
- it is not clear how issues are handled and when to expect a response, and
- enforcement action is rarely taken.

Quotes from residents

“We would like to take action and have attempted to on several occasions. If we can get more voices behind us, it might help but many residents have simply given up because they can't cope with the politics and disturbance of their peace and quiet.”

“Residents don't have the mental stamina to fight against village owners. It's just not the personal shaking in your shoes, it's the money as well.”

“[CAV] don't tell you if it's a compliance issue or not, or what they have done or whether you need to go to VCAT.”

“Operators are well ahead of us – they have oodles of money and we don't, so they can string things out for as long as possible. We don't have the time left to mount these cases and they're well aware of that so they'll string these things out.”

Proposed solutions from residents

Many residents said that there should be:

- an Ombudsman with specific knowledge of or operating specifically for residential parks
- clear pathways to internal dispute resolution with binding outcomes, which could be helped by standardised contracts
- clear pathways to low-cost, external dispute resolution through an alternative to VCAT, for both residents vs. residents, and residents vs. operators-owners
- clear statutory timelines for response, resolution and communication of outcomes of disputes

- training for operators/site managers
- formation of a National Association to represent residential park residents, and
- a mechanism to allow collaboration with residents of other residential parks.

Fees and charges

There are a number of fees and charges applicable to residential parks. Common fees and charges are rents for the land on which a dwelling sits, deferred management fees (DMFs) or exit fees, fees for certain services such as repairs and maintenance, and various fees for the sale of a dwelling, which often includes the use of certain services controlled or run by the operator-owner. Issues with the sale of a dwelling are detailed below in the sale of dwelling section.

DMFs, often referred to as departure or exit fees, are an amount that becomes payable if agreed in a contract and when a resident vacates, and are typically calculated as a percentage of the sale price of a dwelling, not the purchase price. Not all residential parks charge such fees, but DMFs are often presented to residents as a good way to reduce upfront costs. DMFs can vary significantly depending on the contractual arrangement, but are generally charged as a percentage of the sale price for each year a resident has lived in a park up to a fixed maximum, generally around 20 per cent the sales price of a dwelling, with some as high as 40 per cent or more of the sales price.

There was unanimous agreement among residents that the use of DMFs is particularly problematic, and many argued constituted an 'unconscionable' contractual stipulation which conflicted with the law. The main issues with DMFs reported by residents include:

- DMFs are not always explained clearly upfront at the point of contractual agreement
- DMFs can be subject to change in the percentage amount claimed if the owner-operator changes
- the significant loss of capital gains, because they are calculated at the point of sale, coupled with significant increases in house prices across most of Australia, means that it is often impossible to buy elsewhere should a resident want or need to leave
- improvements to dwellings that increase the value of the property are not taken into account, and
- it is unclear what repairs and maintenance DMFs pay for, and many operators/site managers refuse to provide this information.

Other types of fees that residents reported issue with are:

- 0.5 – 1 per cent of the sale of a dwelling is charged for preparing paperwork
- mandatory cleaning fees after you sell your property, which can be up to \$500
- fire levy costs in conflict with the law
- how GST is calculated, which is not clearly explained and is charged at the point of sale which is an extra surprise when selling your dwelling, and
- repair and maintenance fees despite poor levels of upkeep.

Residents reported a number of issues with paying rent including:

- lack of clarity around the methodology used to calculate rent increases

- some marketing is misleading. For example, residents reported seeing brochures that stated no more than 20 per cent of income is charged as rent, which did not transpire
- the use of a blanket 3.5 per cent increase in rent per year or matched to CPI increase, whichever is greater. Recent increases in CPI have meant a significant amount more than 3.5 per cent in rent increase is being charged, and expected to worsen in the coming year during a period where prices are rising across lots of areas
- excessive levels of rent relative to income, otherwise known as rental stress, with some reporting rent constituting an 80 per cent use of their income
- the statutory timeframes for a rent review from CAV are not long enough to get organised
- government rent assistance can be inadequate and only available to certain people, and
- recent rent increases of between 9 and 34 per cent.

Some residents were also of the understanding that they owned the infrastructure in residential parks. Many reported that owners-operators often initiate the sale of infrastructure and take all the profit. On occasion this can be significant, such as the sale of a clubhouse which can fetch a large settlement price.

Quotes from residents

“I pay \$265 a week in rent. I am an aged pensioner, and my income which includes rent assistance is about \$565 a fortnight. So having to live after that is really hard. I came in with a small amount of money, and that is nearly all gone. We tried to challenge the rent increase through CAV but because it was done through CPI they said they could not do anything.”

“My biggest issue at the moment has been the mechanism used for rental increases. The company that owns the site which I live on decided four years ago to get rid of the market rent review mechanism. I don’t know how many people have that but this appears to be a mechanism that the owners can use to get together with a property valuer and hire them to come and give their opinion as to what the rent should be increased to. I have my suspicions as to whether they actually set foot on the property, given the last report I had contained a number of errors in it – saying this park had a number of things that we don’t have. I also don’t know how they decide what the rent should be increased to. However, where I live, four years ago management offered to change from that mechanism to make it simpler and easier for residents, but they didn’t. Despite my complaints, this year I got hit with a big rent increase and I am continually ignored when I engage management about this. They refuse to get rid of the mechanism. This year has been particularly hard because of the increase in various prices. My increase was \$32 a fortnight, which is about a 9 per cent increase.”

“We have done a case study between residential parks. They have the same facilities as us. They don’t have an exit fee. We pay about 3 per cent in exit fees for 12 years, or roughly \$9K per year. They have a \$40 per quarter water fee that we don’t have. Working it all out, we pay \$28 more per year than them but our exit fee is significantly more. We want to know why the people that run these villages say they need the exit fee to maintain things – if you work out those two scenarios it just doesn’t add up.”

“My main concern is the fees and charges, the model we have is 3.5 per cent or CPI, whichever is the greater... given the global financial situation, our CPI increase could be double digit figures. The pension does not rise by CPI. Our main concern is the formula.”

“I have spoken to a politician about the Act and they told me that it is a commercial arrangement. Seems politicians aren't interested in this issue. Politicians need to really look after elderly people. Operators need to be held accountable.”

“I have recently sold my property and was prepared to pay an exit fee of 23 per cent to leave this village. The property cost \$300,000 and was recently sold for \$450,000, which they take off my capital gains.”

“Retirees are enticed into residential parks through misleading advertising around rent costs. They say to pensioners that living here will only consume 20-24 per cent of their pension. In reality, for singles and couples, it's about 29-34 per cent of their pension. When you project that out to 2030 using the formula they use, it equals about 40 percent of the pension. The formula used is dubious as verified by government agencies, but they will not publicly say that. Profits should not come ahead of people.”

“I'm out looking for another property in the real world and properties have gone up so much in price that is to proving challenging. We are a vulnerable group and pretty much all we own is this unit. There shouldn't be a fee on the sale price – it's just wrong.”

“I would love to move and sell but cannot afford to move elsewhere.”

“It gets to point where people can't afford to stay and enjoy the life that was promised but can't afford to leave.”

“We have no recourse to challenge rent increases. CAV can step-in for non-fixed rents, but not fixed rents, so there is nothing for us.”

“One of the issues we have been discussing is the rent increases. One sticking point we have is what the definition of 'rental stress' is. We know this is usually more than 30 per cent of your income... there needs to be a clearer definition of 'rental stress' and how it is calculated.”

“One of the things they also add is the GST, which is calculated at the point of sale. And that's not explained clearly. Some of the residents have early signs of dementia and are not being supported with contracts – they don't know what they are signing.”

Proposed solutions from residents

Many residents said that there should be:

- monitoring of, and issuing and enforcement of penalties for, misleading or deceptive behaviour by operators/managers and staff when negotiating contracts and referring to provisions within them
- DMFs but only if agreed, and they should be based on the original purchase price, not the subsequent sale price

- the removal of DMFs altogether, while others said they should be optional. There was consensus that DMFs require greater transparency over the implications of accepting them, with some proposing that they should be clearly explained across the various increments of change over years as they often increase in percentage over time
- a selling price should not include any improvement works
- greater clarity over the methodology used to calculate a rent increase, input into the design of the method, and standardisation across the sector
- increased transparency over what fees pay for
- a National Association to advocate on behalf of residents
- better coverage of government rent assistance to assist people in residential parks
- permitting CAV to provide more help with rent and fee assessments, to both fixed and non-fixed site tenants, with a mechanism to provide greater power to negotiate a fair rental increase
- legislation specific to residential parks with enhanced protections for residents
- a clearer definition and calculation of rental stress in contracts and under the law
- improvements to facilities and associated costs including knock-on effect to management fees/rent should be democratic and only proceed with a majority vote
- standardise a 2.5 per cent rent increase per year and abolish the CPI formula, with a 29 per cent cap on the total amount of rent charged relative to income which may include rent assistance and should be calculated after other essential costs are factored in
- longer statutory timeframes for a rent review from CAV
- residents should benefit from the sale of infrastructure
- allow non-corporate owner-operators that live in other jurisdictions to be pursued for litigation under Victorian law, and
- provisions in the law that protect a resident who experiences a drop in income.

Management

Residents reported a number of common issues with managers including:

- the use of demeaning and harmful language, whether said face-to-face, witnessed in secret or relayed through other means
- use of fear tactics such as the threat or eviction or other ill treatment, even when there is no legal basis to be making such threats
- dismissal or significant delays in dealing with issues, often in conflict with statutory timelines if relating to repairs
- the lack of emergency planning, with one resident reporting that no emergency plan has been in place for 9 years at their site, and
- being forced to sign contracts under pressure, or in a trade for certain services or requests.

Many residents talked about the difficulty experienced when operators/site managers change, which can bring new ways of resolving issues/disputes, often which are not

communicated clearly, or the new operator/site manager is difficult to work with. The high turnover also means that established relationships are lost and the historical context around issues is often not handed over.

Quotes from residents

“It is difficult when you raise issues and are verbally abused by management.”

“CEO come to talk to people in the village, and people complain about things like maintenance of gardens. Anyone who makes comments the CEO says, “we have to think about our shareholders.” They are also really good at marketing. There’s an incredible imbalance of power.”

“Management goes down hard on them on the basis that they will back off.”

“I expect that management will hear that I have been talking today - I’ll be on the street.”

“There is frustration amongst residents in the transition from old manager to new manager who then say that don’t know of any historical issues and so have to start again and chase up previous issues which is very time consuming.”

“We do not have an evacuation plan in the 9 years I’ve been a resident. We have a map with designated areas but there is no clear plan of what to do in an emergency. We are trying to get a fire warden organised and we are trying to get training provided to facilitate that. We had a visit from the OH&S manager from QLD who showed us a presentation of different fire extinguishers, but we don’t have an emergency plan as we should according to the legislation.”

Proposed solutions from residents

Many residents said that there should be:

- an Ombudsman with specific knowledge of or operating specifically for residential parks, to manage issues with managers
- reduced pressure on residents to make decisions on things and a longer contract cooling off period, and
- required training under the law to improve communication skills and other things which support older people’s needs.

Repairs and maintenance

Repairs and maintenance issues reported by residents were diverse. Many of the concerns centered around the lack of accessibility in parks, which made it difficult for some residents to navigate, such as those who use walkers or wheelchairs. Other residents said that certain parts of their park had significant safety issues, with reports of people hurting themselves due to damaged premises. Many residents said that they had paid for repairs and maintenance themselves due to significant delays or the urgent nature of the repair. Repairs and maintenance examples that were given include:

- unmaintained roads, footpaths and other thoroughfares

- unmaintained or damaged gardens, fencing and plumbing including flooding issues and broken toilets
- disabled parking spots that opened out to grass areas, making it difficult for people with walkers or wheelchairs to transition to concrete pathed areas
- pebble stone areas that make accessibility difficult for people with walkers or wheelchairs
- inadequate lighting, making it difficult for people to see where they are going at night
- the shifting of foundations under a dwelling, which in one case led to a resident breaking their leg
- inadequate recycling collection, with one resident reporting that their park does not recycle paper and cardboard, which instead goes to landfill
- issues with rodent infestations and fixtures that trap and kill animals such as birds, and
- inadequate and often damaged furniture in common areas.

There were many reported barriers to getting things fixed, mainly centering around confusion over roles and responsibilities, with diversity of opinion as to whether management or residents were responsible for repairs and maintenance of certain things, and differing levels of legal understanding.

Some residents maintained that they were responsible for fence maintenance and concrete pathways from the road to their front door, and the driveways from the road to their garage. However, there was some frustration expressed toward the quality of the fencing that was included in the initial sale, which required maintenance not long after purchase. One resident explained that since only the house is meant to be relocatable, they should not be responsible for fence maintenance. Another resident was of the view that operators/site management were now responsible for fencing following recent law changes.

Other residents were confused about what their fees paid for. One resident said that they had taken a case to VCAT over maintenance issues and that there was discussion over what fees covered maintenance, but no one was able to provide clarity on the matter.

Residents spoke about an approved tradesperson list, which they were told by operators/site managers were the only providers to be engaged for repairs and maintenance issues, or were pressured to use providers on the list. Residents reported a degree of nepotism with providers on these lists.

There was some general confusion about what staff were employed to do what, and what level of decision-making power individual staff had to manage complaints about repairs and maintenance. Compounding this issue, residents said that they had reached out for government support to clarify how to get issues resolved and found themselves being passed around agencies without any satisfactory outcome. Other residents reported that decision-making power may be overridden by central management in another jurisdiction.

The reduction in staff at a park was another barrier to adequate repairs and maintenances identified by residents. Some residents explained that their park was well maintained by

gardeners, security and full-time managers for a period of time until staffing levels were reduced by nearly half. There were also reports of there being no one to turn to for help between certain hours, so emergency repairs were difficult to address.

Relationship breakdown was another barrier to adequate repairs and maintenance reported by residents, with many stating that going to VCAT was the only way to get things fixed after conflict had occurred between management and residents.

Not speaking up about issues for fear of repercussion from operators/site managers was another barrier to addressing repairs and maintenance issues, consistent with feedback across different topics explored at the roundtable.

Finally, some residents stated that declining levels of health made taking on repairs and maintenance issues a daunting task, especially when there was evident reluctance on the part of operators/site managers to address issues, and the only potential pathway to resolution was through VCAT which required lots of effort.

Quotes from residents

“We are on a concrete slab with stumps held down by chains and we have had the building foundations move before. The foundation seems to be tilting incrementally. It has happened multiple times and taken months for the contractors to realign the foundations at times. My wife broke her leg as a result of issues from the shifting foundations on one occasion - this prompted a quick response that time. The building has started to move again but management seem to just do temporary fixes. It feels like they are only motivated to fix things when they are at risk of litigation.”

“We have attempted to detail the leftover issues and try to meet with the caretakers but that meeting failed. We can no longer meet with them without a mediator. The meeting really blew up when we met without a mediator. It got out of hand and unfortunate things were said - caretaker stormed out and said they would never meet with residents again.”

“We had a toilet backflow issue that lasted about 11 years because the management didn't believe it was happening. Only fixed it once I threatened to go to VCAT. I have been to VCAT on a number of occasions about issues not being fixed. Our lease only leases the slab that the building is on, management are responsible for the rest of the site.”

“The value of the properties are likely diminished by the bad upkeep. Suggestions to improve things are met with ridicule.”

“It's really hard to find who is responsible for what at any time, I think it's a universal experience of residents.”

Proposed solutions from residents

Many residents said that there should be:

- greater clarity around roles and responsibilities
- clarity around resident rights
- better internal and external dispute resolution pathways

- better external support including advice from government agencies
- accountability across tiers of management, regardless of what jurisdiction they operate from, and
- stronger coordination efforts around planning including input from residents to make decisions.

There was consensus from residents that the quality of the local manager made a difference to how repairs and maintenance were addressed. Words used to describe a 'good' manager included: approachable, good communicator, consistent, respectful, available, and follow-through.

Sale of dwelling

There are a number of issues that can arise when a resident wants to sell their dwelling. Many residents expressed frustration at the pressure from operators/site managers to allow them to control the sale process, including the use of their own staff or sub-contractors which came at a cost. Residents said that often the operator/site manager has the only network to make a sale a realistic prospect, and that they were unwilling to share information that could support a resident to sell the dwelling themselves. There was also frustration at the clauses in contracts which appeared to compel residents to:

- pay between 0.5 – 1 per cent for paperwork associated with the sale of the dwelling, which can add to the DMF cost if applicable
- pay a non-negotiable commission for sale by the operator/owner, generally around 2 per cent of the sale price, which can add to the DMF cost if applicable
- pay various cleaning fees of various amounts depending on the contract
- undertake painting, replace carpet, maintain services and service records for all appliances such as air conditioning units, and install new appliances including ovens, hot water systems and various other things under the assumption of necessary transition arrangements for new owners, or to increase the desirability of the dwelling for sale, and
- not sell their dwelling through a real estate agent.

The amount of time it took for a dwelling to be sold was another point of frustration expressed by residents, often impacted by operators/site managers controlling the sale process and having a vested interest in selling empty units before occupied units first, because site fees are not charged for empty units. In some cases, this leaves former residents or their estates paying site rent for years for sites they do not, and often cannot, occupy.

Another issue with sales is that some real estate agents are not interested in selling residential park dwellings because they do not understand the housing type or cannot make a big sales commission from them.

DMFs were a consistent issue raised by residents that relate to the sale of a dwelling and are covered in more detail in the fees and charges section above.

There were various issues raised about when a resident passes away, including that there is no clarity upfront with contract negotiation about what happens under these circumstances. Residents said that often the estate inherits the contract and is charged for rent up until the dwelling is sold, which can take up to two years, or three if through a private real estate agent. DMFs were raised as an issue in this area as they are still applicable after death, where contractually agreed, and it is often unclear what sum the deceased resident's family may receive when the unit is sold, making inheritance difficult to measure.

Residents also talked about circumstances in which a resident may need to go into aged care. Again, a DMF can make it difficult to assess the appropriateness of an aged care facility relative to financial position.

Quotes from residents

"When I came into the village I was given copies of the purchase agreement, the lease agreement and the sales agreement. That doesn't happen now. One woman came knocking on my door in tears at night saying she had been trying to sell for quite a while. And she was being told by management at the time that you must advertise through us, although in her contract she had an option to go to an estate agent. They didn't encourage that and tried to prevent it. It's very sad."

"If someone can't sell and they go into care, then the family has to continue to pay site fees."

"Sales staff need training when selling these properties."

"We had a guy in our village who for health reasons had to leave. It took 2.5 years to sell the unit and in the end he owed them more money than his unit was worth. He lost the whole lot because of his DMF which was calculated over 12 years, and other fees."

Proposed solutions from residents

Many residents said that there should be:

- free legal advice and assistance available
- latest versions of contracts provided to resident committees and regulators including purchase, lease and sales agreements, in a scenario where contracts are not standardised
- regular review of contracts by regulators in a scenario where contracts are standardised
- fixed sales commission and administration fees, not a percentage of the sale
- clearer legislation around DMFs and third management clauses
- increased transparency from owners-operators in the corporate office and better mechanisms to provide them with feedback and for them to act on that feedback
- greater power to negotiate with buyers to establish what condition the house is sold in and what it includes, such as chattels
- better understanding of residential parks across courts and tribunals, and
- greater clarity around what happens when a resident dies and their family inherits their dwelling, with greater protections against the estate being liable to meet

ongoing rent and DMF costs, or these being void or reduced from the moment the death occurs.

Appendix 1

The roundtable

Approximately 70 residents from residential parks across Victoria joined the meeting, which was co-chaired by the Commissioner and HAAG’s Executive Officer. Staff from HAAG, the Department of Justice and Community Safety, and the Office of the Commissioner for Senior Victorians assisted with note taking and facilitating breakout discussions.

Breakout ‘deep dive’ discussions were designed to illuminate the experience of residents, and broader policy questions about what needs to change. Discussions were facilitated by staff who had question prompts to guide discussion, and with the understanding that there would be significant overlap across topics.

There was one breakout group that consisted of people who were joining as a group in their village, and covered multiple topics.

The Manufactured Home Owners Association were introduced, and contact details provided for residents who want to jointly advocate for change.

Submissions

Those who were unable to attend the roundtable, or fearful of speaking out publicly, were encouraged to either write a submission or ring HAAG or the Commissioner’s Office to provide feedback. 15 written and verbal submissions were received, covering the issues below:

Issues	No. submissions
Standard contracts	2
Fees and charges – rent indexed to CPI	4
Training for lawyers in part 4A	3
Management – Poor communication to residents	3
Maintenance of common areas	7
Exit fees (incl. DMF)	7
Fees and Charges – utilities	2
Fees and Charges – value for money	1
Dispute resolution	2
Management accreditation	2

Preparing for the roundtable

A background paper was jointly prepared by HAAG and the Commissioner and circulated to residents (see Appendix 2). This included information about issues previously identified through other consultations, like the Parliamentary Inquiry into Retirement Housing. Invitations were sent via post and email to all known residential park residents and Residents Committees, HAAG contacts and the recently formed Manufactured Home Owners Association.

Originally the roundtable was planned to be a hybrid meeting, with face-to-face concurrent meetings in the Melbourne CBD and Mornington Peninsula as well as online via Zoom. Due to COVID-19 concerns, the roundtable moved to online, which posed issues for residents who do not have the internet. To mitigate this, some residents joined in groups at a residence or communal village area, and additional tech support was provided to people who wished to join via phone or who were unfamiliar with the technology.

Appendix 2

Background paper: residential parks roundtable

Why are we having a roundtable?

The Commissioner for Residential Tenancies (the Commissioner) and Housing for the Aged Action Group (HAAG) acknowledge and thank residents that have previously come forward to tell both government and community agencies about their experience in residential parks.

What you tell us at the roundtable will be used to provide advice to government and help us to advocate to make residential parks better places to live.

At the roundtable, we want to hear the most up-to-date information about your issues, so that anything we suggest about changing laws or government programs is based on the best available information.

We are holding this roundtable because we want to find out more about life in and out of residential parks. What is good about them, what are the problems, and why do those problems seem so difficult to solve? What works well and what needs to change? We'd like to hear from you – current and former residents and their families – about your own experiences and ideas. We'll have facilitators on hand to lead the discussion, and you don't need to prepare or plan any comments, just come along and talk to us and each other about what you've seen.

What are residential parks?

Residential parks are areas of land where you can rent a site and put a dwelling on that site. Dwellings in residential parks are usually owned by the person renting a site and can be very different in their style and size.

Many residential parks are in caravan parks or former caravan parks, but they can also be purpose-built.

Residential parks generally contain common areas or facilities for residents to use.

Many residential parks are intended exclusively for retirement age residents. There are also newer parks which target the 45+ year old cohort. Residential parks are sometimes referred to as residential villages or lifestyle parks and are similar to retirement villages.

The Victorian context

There is no reliable information about how many residential parks there are in Victoria. Caravan parks are required to be registered but there is no central point to collate these registrations. Census data from 2016 indicated that there were about 9,000 permanent caravan park residents in Victoria, and about 1,194 permanent residents living in manufactured housing estates (another name for residential parks).¹

The Department of Justice and Community Safety has incomplete information that indicates there are eleven corporate operators within Victoria, with the largest being Lifestyle Communities Ltd. At last count this operator held 18 of the 50 known residential parks in Victoria, with between 150 – 300 sites per park.

What does the law say?

In Victoria, residential parks are regulated by different laws. The use of the land is regulated by the planning law. Dwellings may be built according to the building law or the caravan parks and moveable dwellings standards.

Residents' rights and responsibilities are regulated through the *Residential Tenancies Act 1997* (the RTA).

The RTA has two parts that may cover residential parks:

- Part 4 and Part 14 of the RTA regulates caravan parks and movable dwellings in caravan parks, and
- Part 4A of the RTA regulates Part 4A parks and Part 4A dwellings.

The RTA defines caravan parks, movable dwellings, Part 4A parks and Part 4A dwellings. It is not easy to work out what parts of the laws apply to a residential park.

There is a great diversity of dwellings in residential parks. For example, some dwellings are movable, some immovable, some built to building standards, others to the standards required under the caravan parks and moveable dwellings regulations, and some built in other ways.

What has already happened to improve residential park laws?

¹ 2016 Australian Census data, retrieved from: <https://caravanstats.com.au/wp-content/uploads/2019/10/Long-Term-Residents-in-Caravan-Parks-and-MHE-Research-Report.pdf>

In 1988, a specific law recognised residential parks (the *Caravan Parks and Moveable Dwellings Act 1988 (Vic)*), when permanent residency in caravan parks was identified as an emerging housing option.

In 1997, this law was absorbed into a new *Residential Tenancies Act (RTA)*, and then in 2010, Part 4A was added to the law.

The new Residential Tenancies law started on 29 March 2021. This included new protections for residents when entering into site agreements within residential parks.

In 2017, there was an Inquiry into the Retirement Housing Sector. Many residents said that the laws were not good enough to protect people living in residential parks. The Inquiry recommended reforming the *Retirement Villages Act*, which is currently underway, but this leaves out residential parks.

There is strong evidence showing that the same issues identified by the Inquiry and submissions to reform of the RTA are still widespread. This can be seen in reports from community and legal organisations, local government, government agencies, reports to the Commissioner from residents themselves, and several court cases.

Issues told to us by residents

Some of the issues that the Commissioner and HAAG are aware of are (but not limited to):

- Residents find it hard to get proper legal and financial advice before they enter into a residential park agreement.
- Complex laws make it difficult for residents to understand their rights and operators to do what is required of them.
- Unclear laws are challenging for advocates, court Members, and the public.
- Diverse and complex contracts including the use of deferred management fees (DMFs) or “exit fees”.
- It can be costly and difficult to leave a residential park if the resident does not like living there, making it even more important to resolve issues.
- There is no requirement for operators/park managers to be adequately trained to manage these parks, and no incentive for them to get things right and promote harmonious living conditions for residents.
- No fit-for-purpose information for residents on basic rights and pathways to resolve issues.
- VCAT is inherently adversarial and often requires self-representation, as legal assistance can be hard to get, and expensive if not available through pro bono or community legal services. Very few cases are taken to VCAT by residential park residents which creates the impression that everything is okay even if there are ongoing problems.
- There is also an imbalance of power, with operators often having more money for lawyers and legal advice compared to most residents.

What happens after the roundtable?

The Commissioner and HAAG will assess feedback provided at the roundtable and decide the best use of this information

Role of the Commissioner for Residential Tenancies

The role of the Commissioner is to provide independent advice to the Victorian Government and recommend changes to renting laws, programs and services to improve the renting rights, practices and tenant experiences across Victoria. More information can be found here: <https://www.rentingcommissioner.vic.gov.au/>

Role of HAAG

HAAG engage and work with older people through community activism, services and advocacy to achieve social change and housing justice. More information can be found here: <https://www.oldertenants.org.au/>