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Residential Tenancies Act review
Alternate forms of tenure Issues Paper

This submission is a response by Housing for the Aged Action Group (**HAAG**) to the 'Alternate forms of tenure' issues paper forming a part of the review of the Residential Tenancies Act (**RTA**).

HAAG would like to acknowledge that the submission was compiled with contribution from our members, specifically the Independent Living Unit (**ILU**) working group and the Caravan and Residential Parks and Villages (**CARPAV**) working group, and this forms the foundation of our response.

HAAG would also like to acknowledge that much of the content within this submission has already been provided in response to the previous issues papers, although there is some content which was not previously addressed. HAAG members requested that we reiterate our position in this submission, along with ensuring that any gaps in our response were covered.

2. Are any other accommodation models emerging in the parks and villages sector, and if so, who are they targeted at and how do they operate?

Up until recently purpose built residential parks seemed to cater for people over 55 years of age. There is now a residential park in Lara that caters to people 45 years of age and over. The model appears to be the same as other residential parks except the age limit has been reduced. This may be something we see more of in the future as it provides a more affordable form of home ownership for many younger age groups. This is something that may need to be considered when proposing options for amendments.

There has also been a significant change to the rental village model. Although a number of villages still exist catering solely to older tenants, on tenancy

agreements, many have been bought by companies encouraging people to buy units by enticing them with the provision of aged care services on the premises.

Private companies such as Freedom Aged Care and Sunrise Supported Living have begun selling units and providing varying levels of aged care on-site. Covered by the *Retirement Villages Act 1986* (**RVA**) people can live independently or they can purchase care packages that are based on a user pays system. Some tenants, usually in their 80's and 90's, still exist within these villages and their housing future is somewhat unknown.

3. What issues arise for residents in rental villages and independent living units, and what form of regulation would best suit these accommodation models?

Rental Villages

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".[1]

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.

Retaining the RTA as the regulatory framework for rental villages is appropriate as long as the Act is able to take into account those aspects of village living that are currently not regulated, and which will be discussed in further detail below.

Some operators provide 12 month agreements but most provide periodic agreements which are often not in writing. This means tenants are vulnerable to eviction. The 'no specified reason' notice to vacate exacerbates the sense of unease tenants can feel.

In the alternative some tenants believe they have security of tenure, even if they have nothing in writing, and are surprised if they are issued with a notice to vacate or a letter of intention stating they must relocate in the near future.

Lack of security also significantly deters people from exercising their rights and tenant's fear of repercussion is so intense that even if it can clearly be shown the operator is not complying with the law they will shy away from exercising their rights.

The RTA does not provide legislated security of tenure for rental villages. There is no minimum lease term and there is no protection from changes that may occur to the overall village model.

[1] Jones et al, 2007, p47

Case study – Eviction at 99 years of age:

One man contacted HAAG when he received a 60 day notice to vacate due to a change of ownership at the village, which in turn meant a change in the type of housing model being offered. His unit was to be renovated and sold so he was told he had to move.

He had lived in the area for a number of years and at the age of 99 the prospect of moving was difficult for him to come to terms with. His son and daughter were assisting him and it was negotiated that he could move to another unit in the village, rather than having to leave the village. The process came as quite a shock to this resident and caused him great stress.

Written agreements should be made mandatory, clearly setting out a fixed lease term (even if only for 12 months) with option for renewal. Removing the 'no specified reason' notice to vacate will assist to ensure there is security even if a fixed term lapses prior to renewal taking place.

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. Perhaps requirements around compensation and relocation need to be considered, along with hardship provisions to ensure tenants are not unnecessarily moved if it will cause them disadvantage.

Affordability and suitability of housing are also issues for rental village tenants. Rent is usually set at 85% of income plus 100% rent assistance and can result 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. Rent is usually made up of the right to occupy the unit, as well as extra services provided such as laundry and meals. Phone and most (if not all) utility bills are not included and must be paid separately.

Currently tenants must continue paying for services (i.e. meals and laundry) 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.

Many tenants over the years have expressed that the quality of food is terrible in rental villages, with some unable to eat the meals provided due to dietary requirements that the village will not cater for. Others have shared that laundry services have ceased to be provided and yet the rent was not reduced. Services should only be paid for if the resident receives them, or chooses to receive them.

Currently the RTA does not regulate the services provided in rental villages but it does regulate rent. The Act should also regulate the services provided to ensure there is opportunity to access dispute resolution should services not meet the expected standards. Part of the regulation should require certain standards to be adhered to in the provision of the service, such as the regulation of the quality and quantity of food.

Services rendered is a consumer matter and if an older tenant has a dispute in relation to service provision they have to understand consumer law and make an application under the civil claims list at the Victorian Civil and Administrative Tribunal (**VCAT**). This is completely inappropriate, time consuming and complex. Considering most tenants will not even act under the RTA the odds of taking any matters further under consumer law are slim to none. Tenants should be well protected and have clear and simple avenues to challenge costs being charged if they feel they have reason to.

This is where the introduction of a retirement housing ombudsman would benefit residents. It would provide a simple, free, non-confrontational avenue through which to resolve disputes.

The cost of rent, and the cost of services, should be clearly outlined in agreements in terms of general disclosure but also in the event a service is no longer provided and residents decide to seek a reduction in their payments.

Many rental village operators appear to work outside of the regulatory framework, such as not providing the correct rent increase form or not registering bonds with the Residential Tenancy Bond Authority (**RTBA**). Due to the aged and frail nature of tenants many will choose not to challenge them, or will not know they can.

With the complex and often changing arrangements found in rental villages there should be clear disclosure provisions for prospective residents to ensure they understand what legislative framework they are covered by

Units are fairly well designed to accommodate older people with walkers, albeit they are very small, but external village environments are often not designed appropriately. Winding paths, steep inclines and steps can make it difficult for tenants to manoeuvre their way through the village and can limit their use of communal facilities as well as their mobility in and out of the village.

Case study – Steep slopes:

On a visit to a rental village, as I walked up the steep main path through the village, I met a woman on a walker. I commented on the steepness of the path and she responded by saying it provides her with her daily exercise when she walks down to the letterboxes to retrieve her mail.

She expressed that it was getting harder though and some residents were unable to make the journey. She added that many complained about the difficulty they had reaching the dining room too. She said some people were unable to make it because their mobility just would not allow it and they had to eat in their rooms.

Independent Living Units (ILUs)

ILUs continue to be provided as an affordable and relatively secure form of housing specifically for older people, although these informal protections could be more appropriately legislated. ILUs could remain within the framework of the RTA if aspects of village living that are not currently regulated are included. Alternatively the RVA could also deliver an appropriate framework if rental arrangements were properly acknowledged and regulated within it.

ILU tenants are a more vulnerable group and "older people are one of the least mobile population groups".[2] Security of tenure was identified as a core issue for older renters in all rental housing types. However, ILU tenants tended to express "a lot of trust in their providers to provide services and security as expected despite few legal foundations"[3] usually due to the moral values espoused by the organisation.

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 taken into account.

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.

[2] Jones et al, 2007, p43
[3] Cooke, 2016, p37

Case study – Confused operators:

One man contacted HAAG after a warrant of possession had been executed and he had to leave his ILU unit. The process had taken place as if it was a tenancy arrangement, covered by the RTA, and the man was under the impression he was a tenant.

After some further questioning it was deduced that in fact the operator had used the incorrect legal framework and the ILUs were covered by the Retirement Villages Act 1986.

Unfortunately given VCAT had already made an order of possession and a warrant had been executed the only way to challenge the validity of the process was through the Supreme Court and this was not feasible. This meant the resident had to seek alternative accommodation.

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.

Many of these housing clusters were built between the 1950s and the 1980s and therefore the stock is ageing. Some providers are facing major challenges in this area. The state of the stock is deteriorating and becoming inappropriate for tenants as they age. Units are mostly very small and can be inaccessible for people with mobility issues and stairs can be difficult to negotiate with shopping, injuries and certain health issues. Someone in a wheel chair would have great difficulty living in an ILU and in most cases would even be unable to enter their front door.

Rental affordability and protection is also important for ILU tenants. ILUs are especially catered towards pensioners and therefore need to provide a lower than average rent to ensure tenants can sustain their tenancies. In fact according to those tenants interviewed by Cooke, in her report 'Independent Voices', "affordability was the most significant factor for (tenants) in terms of why they had moved into their ILU initially, and also why they choose to stay".[4]

In general rent in ILUs is provided at "below both housing stress and public housing rates"[5]. Often rent is set at below 30% of income although this, along with all living costs, is steadily increasing. Unfortunately an ILU provider is not required to maintain those low levels of rent. ILU rent could still be susceptible to market reviews, as per the current RTA provisions, which would make this unaffordable for older people on a fixed income.

[4] Cooke, 2016, p16
[5] Bridge, 2011, p78

Rents and fees can also often include utility costs, where utilities are not separately metered. Taken into account this may reduce the overall cost of living but more often now utility bills are paid for separately. Although some tenants and residents may be experiencing housing stress, or may be on the cusp of it, it is a much more affordable and appropriate option then the private rental market.

Written tenancy agreements should be provided to all ILU tenants and should provide a clear explanation of the purpose of the rent. This would make it easier for tenants to know what they are entitled to receive.

For ILUs under the RTA rent increases tend to occur annually, although by law they are allowed to be increased once every 6 months. Mostly tenants say the increases are reasonable and tend not to be calculated according to market review, but once again the RTA allows for market rates to influence rent.

HAAG members believe rent increases calculated according to the Consumer Price Index (**CPI**) are reasonable for both tenants and ILU operators. ILUs are a form of low income housing specifically for pensioners. Legislated CPI review in the RTA would allow this affordability to remain sustainable and would continue to cover cost of living expenses incurred by the operator.

ILU tenants are generally fearful of exercising their rights because of their vulnerability and lack of security. Although all RTA dispute resolution processes are available to them they often do not understand their rights and are not willing to challenge the ILU operator. According to Cooke "the majority of (tenants) interviewed reported being unaware of other dispute resolution options, or routes to making a formal complaint"[6] beyond raising the issue with management.

Another concern for ILU tenants is the difficulty communicating with management. Rental ILUs often do not have a manager on site and they have to contact the head office of the Not-For-Profit (**NFP**) organisation with any concerns or requests. ILU tenants have voiced that often managers were absent from their day to day lives which can leave tenants feeling ignored and forgotten. This disconnect can make it difficult to have matters resolved promptly and sometimes tenants will choose not to contact management so as not to be seen as a burden.

It is because of these aspects that ILU tenants have expressed they would prefer having access to an ombudsman for support in conflict and disputes rather than relying solely on management and VCAT.

Another issue of concern for ILU tenants is that often management standards are lacking. It has been reported by tenants that "some organisations lack all of the required skills to run the organisation effectively"[7] which leads to poorly managed housing.

[6] Cooke, 2016, p49
[7] Ibid, p57

The repair and maintenance of communal areas is an unlegislated area that can cause difficulty for tenants who observe any issues in the environment, such as trip hazards and slippery debris. The communal environment is a major aspect of ILU living and yet it is unregulated. This also includes the way in which tenants interact within the communal environment and the use of any common facilities. The RTA provides no clear guidelines about rights and responsibilities when it comes to communal areas and this oversight must be addressed.

Part 4 caravan park residency rights

4. **Under what circumstances should a caravan park occupant be considered a 'resident' for the purposes of the Act, and when should the Act not apply?**

A caravan park occupant should be considered a resident once they make it clear they wish to reside permanently in the park, and the dwelling is their primary residence. This should be accompanied by a written agreement from the park operator to formalise the arrangement so there is no confusion about the person's status.

5. **Do any of the definitions in the Act relating to caravans, movable dwellings or caravan parks require clarification, and if so, what aspects of the definitions require clarification?**

The definition of a moveable dwelling appears to be outdated. At the time it was introduced it was used for dwellings that are now regulated by Part 4A. The definition of a Part 4A dwelling is slightly different to that of a moveable dwelling and therefore it is unclear what the term 'moveable dwelling' is used to define.

Subsequently if the definition of a 'caravan' includes a moveable dwelling then that would also need to be redefined so that the two terms were able to be either differentiated or merged together.

6. **What are the risks and benefits for park owners providing, and residents having, security of tenure in caravan parks?**

An owner/renter (someone who owns the dwelling but rents the site on which it stands) with a caravan on wheels may easily (although not necessarily) be able to drive out of the park if the need arises, but more often permanent residents live in dwellings that are much more difficult to move. This is usually due to the improvements and additions made to the dwelling over time. These caravans effectively become permanent structures. Renter/renters (people who rent both the dwelling and the site) most often live in simple cabins or manufactured homes in the park that are usually owned by the park operator and they live there due to the level of affordability.

Currently security of tenure is not provided under the RTA for caravan park residents. There is no minimum term required to be given by caravan park

operators, termination provisions are uncertain and sometimes operators threaten eviction to dissuade residents from exercising their rights.

Caravan park residents are usually a more vulnerable group with a fixed income, such as the age or disability pension. If 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.

A lack of security also hinders a residents' ability to exercise their rights, due to the fear of repercussion and eviction. A provision like the 'no specified reason' notice to vacate creates a high level of insecurity for residents.

The 'no specified reason' notice to vacate permissible in the RTA 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 hesitant to take action due to the possible repercussions.

Security of tenure also includes sustainable, long-term affordability. Rents in caravan parks are generally reasonable compared to other forms of rental housing, yet residents often express concern regarding rent increases and how they are calculated. Very often rent increases appear excessive in relation to the lack of, or limited improvements in, services provided by the operator such as maintenance of common areas.

Rent increases are regular in caravan parks and for people on a fixed income this can place them under financial pressure. Alternatively sometimes increases are neglected for a number of years and then an excessively high increase is applied which also places residents under financial pressure.

Many caravan park residents have lower incomes and therefore rent increases should be calculated according to the CPI which is then reasonable for both parties. Park operators often cite an increase in their costs which requires them to increase the rent. If the CPI formula was used then the park's overall cost increases would be reflected more appropriately in the increase being passed on to residents.

Security of tenure is also tied into a residents' ability to access the park and their dwelling long-term. Caravan park dwellings and environments must be accessible and adaptable to residents' needs, especially as they age and their mobility changes. A park operator should not be able to unreasonably refuse modifications required for a resident to continue to live independently within the park.

There are often no written agreements provided to permanent residents, which means 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, who can sometimes be difficult to deal with

and unfairly wield their power, which often limits and constrains residents' lives in the park.

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.

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

Where managers lack the necessary skills to understand their responsibilities, and the rights of residents, dispute resolution can be very difficult to obtain. Improving security would assist residents to feel more confident to exercise their rights but the current systems do not properly support and encourage residents to challenge managers who fail to comply with the law.

Although tenant advocate services, such as HAAG and community legal services, can assist park residents with some disputes the most effective way to obtain a legally binding outcome is via VCAT. Many older residents do not feel comfortable taking matters to VCAT and will often decline this course of action. Older residents have agreed that access to alternative dispute resolution processes, such as a retirement housing ombudsman, would encourage them to take further action if the need arose.

Security of tenure provides stability to residents, as well as encouraging a more relaxing environment to live in, ensuring that residents can fully utilise their rights within the Act and encouraging operators to fulfil their responsibilities.

7. What obligations should caravan park residents who own their dwelling have under the Act in relation to the appearance or condition of their dwelling?

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 residents when they have informed the park of their intention to sell and have been told they are not allowed to sell on-site. This means they can only sell to a buyer willing to transport the dwelling off the site. These types of constructions are difficult to dismantle and move.

HAAG has also assisted residents where due to the age of the dwelling they have received a '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 RTA does not offer compensation provisions for these situations.

Residents, in general, understand they must maintain their home in good repair and most continue to make improvements to their home over time. In terms of health and safety it is also generally understood that it is important to ensure dwellings are not putting anyone at risk within the park.

Unfortunately it must also be understood by park operators that due to the age of some dwellings they may not be able to comply exactly with current standards, but that does not mean they are hazardous either. Some residents have received letters from park management requesting that they undertake a number of tasks to improve their home but some people simply cannot afford to pay all the costs associated with that type of maintenance.

Case study – Ageing home:

One woman in her 80's contacted HAAG to receive support to find alternative housing. She lives in a caravan park and has been told she cannot sell her dwelling on-site. Regardless of that she has been asked to undertake a number of tasks to make improvements to her dwelling.

At this stage she is unable to afford to complete the list, although she said she had completed a couple of tasks. Her hope was that she could find alternative accommodation before putting to much money into a home she cannot sell.

She is also worried that if it takes too long to find something she may receive a notice to vacate, like a number of her neighbours have received. She said the park has been offering some compensation to residents in those circumstances but she does not want to broach the subject with them until the time comes for her to move out.

HAAG believes that it would be reasonable to expect residents to maintain their homes in good repair, to ensure basic health and safety standards are adhered to but it needs to be clear what those standards are. Standards should not be set by the park operator and it should not be based on the appearance of the dwelling. This should also be something that is undertaken over a period of time to reduce the burden on residents.

8. How should the Act address the sale of dwellings in caravan parks?

In some instances where an operator has deemed that a dwelling must not be sold on-site a 'no specified reason' notice to vacate may have been served and residents have been inconsistently offered compensation, from $5000 to $10,000, to be able to leave the park without having to move or dispose of their dwelling. These offers are usually well below what the dwelling is worth if it was able to be sold on-site, but the offer is made at the discretion of the park management and is not offered to every person in this predicament.

According to the RTA every resident has the right to sell their dwelling but the issue is whether the park operator will issue an agreement to any prospective buyers. Although the RTA allows for residents to challenge the park operator at VCAT if it is thought they are unreasonably withholding consent, or obstructing a sale, most people will not take any action.

If a park operator decides a dwelling cannot be sold on-site it should be mandatory for them to provide evidence to support their refusal, such as where minimum standards are not being adhered to. If they cannot provide this evidence then there should be no restrictions on the sale of the dwelling.

It may be that many residents are unable to afford to make improvements to their dwelling. If the park operator can prove the standards are not being adhered to there should be compensation provisions contained within the RTA that enable residents to realise some value from their asset. Perhaps this could be based on an independent valuation and the value should relate to the dwelling as it sits on-site because this would be the equivalent of the financial loss experienced by residents.

Without clear compensation provisions many residents do not have the finances to move and finding alternative accommodation can be very difficult. This tends to put further pressure on the public and social housing sector as often this is the most appropriate form of housing for residents to move to based on their financial eligibility.

9. How should the Act address circumstances where a caravan park closes, or is to be sold and the land used for another purpose?

In the case of a park closure, sale or change of use the RTA does not currently 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 provides compensation, or assist with relocation.

These types of termination will result in residents having to pay to move their dwelling to another park (if they can find an appropriate site to move to), to pay to have their dwelling disposed of or to leave their dwelling behind. Every outcome ends with a financial loss for the resident.

There should be clear provisions that ensure park operators compensate a resident for their financial loss, or cover the costs of a relocation or disposal.

Case study – Change of use:

A number of older residents in a caravan park received notices to vacate due to the park operator changing the use of part of the park. Some residents were offered other sites to move to, while some were told they had to vacate the park. Unfortunately there did not appear to be a consistent approach.

Some of the sites offered were not big enough to accommodate the dwellings that residents had. There was some compensation on offer but it was not clear how much and whether each resident would receive the same amount. Some people were told they would not be affected by the changes and then a few months later they too received notices to vacate.

The management were difficult to approach and many residents did not want to challenge them. Some people just left the park, leaving behind their dwellings, without trying to negotiate any compensation or assistance.

Part 4A site agreements

11. What are the advantages and disadvantages of standalone legislation for residential parks, and what other forms of tenancy should be included in that legislation?

Residential park arrangements are complex and becoming even more so as the sector grows. It is a lucrative business model and Victoria is still a fairly small market compared with states like NSW and QLD. There is minimal competition at this time within the Victorian market although other investors are now beginning to enter the market recognising the untapped market potential.

It is because of the growing complexity of the sector that HAAG believes residential parks require stand-alone legislation.

It is no longer appropriate to include them in the RTA. The unique and complex model requires its own legislative considerations to ensure that proper protections are in place to acknowledge the significant investment made by both site tenants and site owners.

Western Australia, South Australia, New South Wales and Queensland all have separate legislation for residential parks. Given the growth of permanent living in residential parks there is a need now to comprehensively regulate this sector.

Although dwellings are known as ‘moveable’ and ‘transportable’ in reality it is not a transportable sector or business model. Site tenants do not move into residential

parks with the intention of ever moving their home out of the park and park owners do not build parks for permanent living hoping that people will one day move their homes out of the park. In fact many parks are not designed to enable people to move their dwellings even if there was interest to do so.

For all intents and purposes this is permanent housing, and HAAG members believe the way it is named and defined needs to better reflect this. The term 'manufactured home' has been favoured by HAAG members to realise the permanency of the structures currently built in residential parks. It is believed that by changing the language this could mean that separate legislation could cover all of those site tenants who live in 'manufactured homes', whether in purpose built parks, mixed developments or caravan parks.

Up to date the term 'residential village' has been used informally to describe a purpose built park made up of moveable dwellings providing permanent accommodation. There have been other instances where the term has been coined by local councils when describing the nature of permit provided for particular housing types, and even by VCAT in some permit application orders.

The term was used by VCAT to describe the characteristics required to enable proper planning permits to be approved. Unfortunately 'residential village' is not a current legal term under the RTA and does not have a visible status in the overall sector which we believe has led to some confusion and misunderstanding. It is a term that does reflect the type of communities being built and could perhaps be considered in stand-alone legislation.

Re-defining the sector would be easier if stand-alone legislation was considered. This would enable arrangements to be more appropriately reflected and could also focus on the need to keep costs low and maintain this model as an affordable housing option targeted at older people.

12. How would residents and operators benefit from a central register of residential parks and villages?

There is no way of knowing how many residential parks there are currently in Victoria because there is no central register where site owners must provide their details.

Registration requirements currently sit with local councils but it appears they all collect different levels of information and this is not necessarily provided as public information. Even the issues paper noted on page 13 that "there is currently no authoritative source that identifies the actual number of caravan parks, residential parks or actual number of park residents in Victoria".

Consumer Affairs Victoria (**CAV**) should oversee a public register of residential parks, as they do for retirement villages, but there should be more information disclosed on the register about the site owner and the park. It should be legislated that a site owner must register their details with CAV or penalties will apply.

This would enable government, industry and other stakeholders to better understand the scope of the sector and its requirements. It would also enable prospective residents to potentially research their options, depending on the level of information made available to the public.

13. What, if any, terms or matters should be included in a site agreement, and if a site agreement were to be prescribed, what items should it include?

A fixed term should be prescribed within site agreements providing security of tenure to site tenants.

Site agreements should contain clear and up front disclosure of all rents, fees and charges as the RTA requires now. Taking it a step further it should be clear what the purpose of site fees are by listing what services the site fees pay for to encourage transparency.

The formula used for site fee increases, and how often they will increase, should be disclosed as should the way in which utilities are charged and paid for, and whether the site owner supplies electricity through an embedded network.

Any exit fees should also be disclosed, according to the requirements of the legislation, with clear and transparent formulas.

Rights and responsibilities around repairs and maintenance on the site must be included, as well as for common areas and facilities, with an explanation of the maintenance procedures within the park.

Provisions around the process of selling a dwelling should also be disclosed, including any obligations placed on the site tenant and site owner (i.e. liabilities and associated fees).

Grounds for termination (for both parties), complaints procedures and dispute resolution processes should also be included, along with requirements related to management standards, training and accreditation, management decisions, roles of residents committees, residents' participation in decisions and park rules.

Minimum standards for dwellings should also be included (regarding maintenance but also in building and planning regulation) along with information about emergency management, office hours, registration requirements, and clear information about the relevant authorities that oversee the various areas of regulation.

The format and layout of information should be in standard form, produced by CAV, so that prospective residents can more easily compare their options. Agreements should either be written in plain English, or be summarised in a plain English document, to ensure it can be easily understood and interpreted.

Information should also be provided in other languages, to make sure information is accessible to people from Culturally and Linguistically Diverse (**CALD**) backgrounds.

Agreements could also allow for additional terms to be added by site owners for provisions that are unique to their model, as long as agreement clauses comply with the regulation.

15. Could the requirements around the disclosure of rent, fees and charges in a site agreement be amended to assist residents to better understand them, and if so, how?

The RTA currently states that the site agreement must provide the purpose of rent, fees and charges. However it is not clear what type of information should be provided or in how much detail.

Site tenants have stated they would like to be given a clear list of services and facilities covered by the site fees in the event there is a dispute over a reduction in services, or the services are not provided and the site fees keep increasing.

Residential parks also often charge many other fees, which can cause financial complexity and stress, such as visitor's charges and utility charges.

There should be no visitors fees charged in residential parks. Site tenants own their homes which are self-contained and visitors will use the facilities in the home. Currently visitor's fees can vary from $8 a night to $20 a night. If there are communal facilities that visitor's would like use then perhaps a 'user pays' approach should be taken.

Utility charges and whether utilities are separately metered should be made clear from the beginning. Especially where a park supplies an embedded network there should be clear disclosure provided about charges and the impact an embedded network has on the site tenant. This should be supplied prior to a site tenant moving into a park.

Overall all fees and charges should be clearly disclosed (amount, purpose, explanation and formulas) in written site agreements or should not be allowed to be charged. There should also be simple fact sheets outlining costs for prospective site tenants to be able to make informed decisions. Also included in disclosure should be those charges that are paid separately by the site tenant (e.g. what site fees do not cover) so there is no confusion and surprises.

16. Should the Act regulate exit fees and deferred management fees, and if so, how?

Exit fees, such as Deferred Management Fees (**DMFs**) and administration fees, are more prevalent in the sector now yet they are not regulated by the RTA. These fees are charged based on clauses contained in the site agreement. 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 option due to ever rising costs.

The purpose of DMF's is unclear and the percentage charged ranges from 15% to 40%. Currently the DMF is argued to enable operators to charge less in the initial purchase of the dwelling. This has never been proven to be true and is doubtful given the costs now evident to purchase a new home in a residential park, which for new homes can range from $300,000 to $450,000.

It has also been stated by some operators that DMFs provide for costs related to management and maintenance of park infrastructure. Site fees are also meant to pay for these costs so HAAG has questioned whether there is a doubling up of fees being charged to site tenants, which is unfair and inequitable.

It has also been said that DMFs allow site owners to provide long term leases while compensating them for the encumbrance on the land. Although this can seem like a reasonable trade off, some of the current levels of DMF being charged are unreasonable and excessive even based upon this argument.

There are also varying arrangements in relation to capital gains. Sometimes the DMF is taken from the original purchase price of the dwelling so any capital gains are awarded to the site tenant. Many operators though take the DMF from the sale price of the dwelling. HAAG believes capital gains should be afforded to the site tenants, especially as many will make improvements to their dwelling over time.

HAAG members believe DMFs should not be charged in this sector as none of the current arguments provided by industry seem to provide good enough reason to do so.

Comparably 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.

If a DMF were to be charged HAAG members agreed that 10% would be a reasonable cap, 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, as well as providing extra income for site owners.

Some residential parks also charge refurbishment costs. It is at the discretion of the operator as to what needs to be undertaken, and the operator chooses the tradespeople and the cost. There is no choice provided to the site tenant.

In a regular home sale it is at the discretion of the seller whether they choose to refurbish prior to sale. Otherwise the home is sold as is and the buyer makes

changes once they move in. This is how it should be in residential parks as well. Otherwise exit costs can very quickly add up and leave site tenants with significantly less then what they originally purchased the dwelling for.

There are often other fees payable on exit too, such as sales commission and administration costs. Sales commission costs are often higher then those charged by an independent agent. Sometimes operators also say these will be charged regardless of whether the park sells the dwelling on behalf of the site tenant.

The purpose of administration costs is unclear, especially in light of sales commission and DMFs. It appears operators might be doubling up their charges and without clear explanations site tenants are unable to clarify this and are losing large portions of their money upon exit. All of these charges should have clear guidelines and a clearly disclosed purpose in the event there is a dispute about the cost.

17. What, if any, changes to a site tenant's liability for breaking a site agreement should there be in the Act?

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

If a site tenant must vacate their unit, especially due to illness, death or the need for advanced care, there should be a much clearer limit and formula in the continued payment of site fees.

HAAG believes that once a dwelling is vacated site fees should only be paid for a maximum of: 6 months, until the unit is sold or the site agreement comes to an end – whichever is the lessor. The site fees should be set a lower level to reflect the reduction in services being used, such as utilities and communal facilities. The site fees owing should also only have to be paid out of the sale of the dwelling. This would take into account the hardship someone might experience having to pay daily care payments, as well as site fees.

There should also be an express 'duty to mitigate' provision for site owners to ensure they are taking the necessary and reasonable steps to find a new site tenant. This could include advertising, engaging an agent and the number of people shown through the unit.

Currently the law provides a disincentive for site owners to find a new site tenant because they have a guaranteed income. By limiting this and ensuring they must be able to prove their efforts it may encourage site owners to sell more quickly.

18. If a rent increase is disclosed in a site agreement, what processes should be available to a site tenant to request a rent assessment?

Whether a rent increase is disclosed in a site agreement or not should not impact on a site tenant's ability to seek a rent assessment for excessive rent. 60 days notice of a rent increase, on a prescribed form, should still apply.

Although providing a clearer outline of what site fees cover would assist the overall process there may still be times when site tenants feel the increase is too high and they should have the right to challenge it. Perhaps a provision should be included that only allows a site fee increase according to CPI and in relation to the costs of the services and facilities covered by the fee. Any relevant information would have to be included with the 60 day notice and for an increase above CPI site tenants would have to vote and the majority would have to agree to the increase.

This is similar to the RVA whereby an increase in the maintenance charge is in line with CPI and can only be applied to operating costs, and any increase above CPI must relate to rates or wages or must be voted on and agreed to by the majority of residents (75%).

19. What is an appropriate level of security of tenure for site tenants, and how should issues relating to a site tenant's investment in their movable dwelling be factored into this?

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. Security should be inherent in this housing model.

This failure of the residential park 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.

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 RTA 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. In residential parks eviction means the site tenant, as well as the dwelling, must be removed off the site and out of the park.

The RTA 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.

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 United Kingdom (**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"[8]. 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.

In the UK Act and North Ireland *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.

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 there is no standard industry practice at this time. There are still many site tenants across the state without fixed term agreements that are susceptible to eviction.

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

The zoning of residential park land could also assist to provide security of tenure. In the UK "lack of secure tenure has been addressed through the permanent zoning of residential parks"[9] 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

[8] Bunce, 2010, p10
[9] Ibid, p9

security of tenure 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.

20. What are the advantages and disadvantages of amending the Act to regulate the commission a site owner can receive from the sale of a site tenant's dwelling?

Site tenants are generally accepting of the requirement to pay a sales commission to the site owner, as long as the site owner actually undertakes the role of sales agent.

Many site tenants share that their site agreement states the sale commission is payable to the site owner regardless if they are the appointed agent or not. Many site tenants also say the percentage charged by their site owner exceeds that which can be found when seeking an independent agent.

Site tenants generally feel that the site owner is best placed to sell the dwelling on their behalf because of their vested interest and their knowledge of the product. Some site tenants feel independent agents do not understand the sector well enough and are therefore ill equipped to sell residential park dwellings.

A sales commission should only be charged by the site owner if they act as the sales agent. The commission they charge should be comparable to that charged by local independent agents. This would be fair and equitable for both parties.

21. How should the Act address circumstances where a residential park closes, or is to be sold and the land used for another purpose?

The RTA does not appropriately address the sale, closure or change of use of a residential park. Currently even with long term leases upon the sale of a park previous site agreements are not technically 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.

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

In the event of the sale of a park site agreements should be binding on the new owner. In the event of closure or change of use there should be strong compensation provisions included for site tenants so they do not experience financial hardship or loss.

22. What are the appropriate arrangements that should apply where a sole site tenant dies during the term of their site agreement?

A site agreement, and site tenant's right to occupy the site, should be able to be willed and/or assigned to another person and the site owner should not be able to unreasonably withhold consent. This would then place all related responsibilities on the assigned person, including payment of site fees, as well as the decision to sell the dwelling if they choose not to move in to the park.

Case study – Death of a site tenant:

A woman in her 60's contacted HAAG after her mother passed away. Her mother had willed her the park dwelling she had lived in for 20 years. The dwelling was assessed to be in good condition by an independent building surveyor and was structurally safe and sound.

The park however decided the daughter was not allowed to move into the dwelling, neither was she allowed to sell it on-site, and the management outright refused her site fee payments. They stated she was not the site tenant and the sole tenant had died therefore the estate had to organise the removal of the dwelling off the site.

She had lived there with her mother, as her carer, for 5 years and she believed the park knew she would be willed the dwelling upon her mothers death.

The park was clear in its intention to regain possession of the site to redevelop it with a new Part 4A dwelling. This placed a great deal of stress on the daughter as she had been under the belief that she was entitled to live there and had not been told otherwise until two weeks after her mothers death.

What has not been identified in the issues paper is the situation where a site tenant might move into a park on their own but over the course of time they might marry or have a partner move in. It should be legislated that upon request the partner/husband/wife is added to the site agreement, at no extra cost, to ensure they are legally covered as a couple should anything happen to one of them.

If this has not occurred upon the death of the original site tenant it should be automatic that the partner/husband/wife be made the site tenant, whether by will or assignment, without resistance from the site owner. Once again the site agreement can be amended, at no extra cost, to reflect the change in circumstances.

The same would apply in the opposite should a couple move into a park and one pass away the remaining person retains the right to occupy the site as the site tenant for as long as the agreement allows.

23. What would be an appropriate balance of responsibilities for maintenance and repairs in relation to Part 4A sites, site fixtures and dwellings?

The lack of clarity around whose responsibility it is to maintain and repair sites and site fixtures causes many issues for site tenants.

In section 206C of the RTA "a Part 4A dwelling owned by a site tenant does not form a fixture of the Part 4A site"[10] on which it is situated. It is understood that any fixtures of the site belong to the site owner and therefore should be their responsibility to maintain and repair although the RTA does not make this clear.

If damage is caused by the site tenant's negligence then it is reasonable they should take responsibility for the repair however in other circumstances where repair and maintenance is required in relation to the site and site fixtures the site owner should be obligated to undertake this.

For example in a regular tenancy arrangement if a fence requires repair, through no fault of the tenant, the landlord is responsible to fix it and so it should be consistent with Part 4A arrangements. The same should be prescribed for all fixtures and infrastructure on the site that does not belong to the site tenant, as well as any issues related to the land itself.

Case study – Site sewerage:

A site tenant experienced some issues related to the sewerage infrastructure of his site. He contacted the site owner who promptly had someone come out and repair the problem but then sent the site tenant the bill.

The site tenant contacted HAAG asking if it was his responsibility, or that of the site owner, to pay for those repairs. Given the matter occurred through on fault of the site tenant and it involved the site infrastructure it was concluded the site owner was responsible for payment.

HAAG wrote to the site owner stating just that. The bill was also addressed to the park and not to the site tenant which meant the site owner could not relinquish his responsibility.

The site owner never responded or challenged the matter further but if he had potentially the only way to resolve the situation would have been to take it to VCAT. It is unclear however under what provision this would have occurred given the RTA contains no Part 4A repairs or maintenance sections.

[10] *Residential Tenancies Act 1997, Part 4A, (Vic), section 206C*

The dwelling is owned by the site tenant and is therefore their responsibility to maintain and repair as required but the Act should state that if the repairs required resulted from instability in the site or foundations then it is the site owner's responsibility to undertake repairs to the dwelling.

Case study – Homes falling apart:

One couple bought a unit in excess of $300,000 in a residential park and within months they noticed a number of issues occurring with the home such as significant cracking, splitting and sinking which resulted in them not being able to use their bathroom at all. They purchased a product that was flawed from the outset.

After much discussion and negotiation with the park owner, and on the receiving end of much hostility, they decided to hire their own professional surveyor to assess the situation. This resulted in also paying for a soil test to be undertaken because it appeared the concrete slab upon which the dwelling was built was unstable and sinking into the ground causing the instability of the home.

It was found that the soil was in the worst 2% of Victoria and could not sustain the type of foundation built upon it. After seeking legal advice and being persistent with the owner about what they wanted the couple managed to negotiate that the owner build them a new home, on a different site, at no cost to them. This should never have happened but because there is no inspection process, no repair and maintenance guidelines and significant exemptions similar situations occur all too often.

Issues common to caravan and residential parks

25. Should the Act regulate the management practices of park operators, and if so, what reforms would address this?

For residents and site tenants complaints about management usually relate to poor people skills or a lack of communication skills. Complaints also pick up on a lack of knowledge and understanding from management about the rights and responsibilities of residents/site tenants, and bullying and intimidation especially towards more vulnerable older people. This reflects the inherent imbalance of power between residents/site tenants and park operators/site owners and their representative managers.

HAAG members believe there is generally a poor standard of management due to the lack of training and associated skills that should be required to manage a park. Currently there are no accreditation requirements and there are no set standards so anyone can be a manager.

In the Wales Mobile Homes Act 2013 it states that the local authority may not permit land to be used as a relevant site unless they are "satisfied that the owner is a fit and proper person to manage the site or (if the owner does not manage the site) that a person appointed to do so by the owner is a fit and proper person to do so,".[11]

The guidelines provided in the Wales Act to assess whether someone is 'fit and proper' considers whether they have committed a serious offence, practiced unlawful discrimination or contravened a law relating to housing.

HAAG members would like accreditation and training for managers and owners to be mandatory, and legislated, to set a higher (and more consistent) industry standard. There should be regular refresher training and the guidelines should include a police check. Part of the training should also include how to work with more vulnerable groups such as older people. For instance it is important that operators and managers understand the impact of ageing in people's lives.

26. What are the advantages and disadvantages of making detailed guidelines under the Act for park residents' committees?

Currently the RTA allows residents committees to form in residential parks and to use the communal facilities to meet but unfortunately no further guidelines are provided to explain their purpose and how they might function. There is also no requirement for operators to acknowledge the status of a committee which can deter people from participating.

In recent amendments made to the Scottish Mobile Homes Act 1983 it describes clearly what a residents association is[12] and states that the site owner must consult the association about matters which affect the residents.[13]

Making more detailed guidelines within the Act about the role and status of residents committees, as well as the requirement for management to recognise the committee and consult with them, may encourage parks to form committees and assist them to be productive and worthwhile.

[11] *Mobile Homes (Wales) Act 2013*, (Wales), s 28 (1a)
[12] *Mobile Homes Act 1983*, (Scotland), section 31(1)
[13] Scottish Government, 2013

Case Study – Residents committees:

One group of site tenants decided to form a residents committee in the hope it would make it easier to communicate with the park operator.

One issue they tried to address was access to the common room, especially for those with more limited mobility. They made several attempts to write to management.

After not receiving any response from management to any of their correspondence and feeling as though they were hitting a brick wall the committee decided to disband. They felt disappointed but did not feel they could make any difference because management did not recognise them as a valid entity.

It would also assist appointed site tenants to understand their role and responsibilities as committee members. Issues have occurred when in some instances residents have utilised the committee as an avenue for a personal agenda, or when members begin to kowtow to management, rather than representing the interests of the site tenants in the park.

In South Australia the *Residential Parks Act 2007* allows for a group application to be made to the tribunal in the case of parks rules thought unreasonable.[14] This is in essence a class action and provides the residents committee with a role to coordinate the process. In Victoria residents committees in residential parks have no such power or prescribed role in the RTA.

It can be difficult when a number of site tenants in the park have a similar issue and the residents committee are making attempts to negotiate with management on their behalf. If the matter must proceed further, for example to VCAT, the residents committee cannot represent the site tenants. Rather individuals must each separately undertake an application. Residents committees should have the power to represent the interests of site tenants on matters that impact a larger number of people.

Sometimes residents and site tenants are fearful of participating in a committee in case it places them on the receiving end of management's retaliation. Residents in one caravan park have made many attempts over the years to form a committee but because of the vindictive nature of the manager this has never been accomplished.

[14] *Residential Parks Act 2007*, (SA), section 9(1)

27. What reforms, if any, are necessary to strengthen the existing provisions in the Act in relation to the application and enforcement of park rules?

Currently there are provisions in both Part 4 and Part 4A that if park rules are not considered reasonable residents and site tenants can take the matter to VCAT in order to have the rule be declared unreasonable and invalid. This rarely happens and unfortunately there are no provisions that ensure that true consultation takes place when there are changes made to the rules.

Currently in Part 4 no consultation is required and in Part 4A notice of changes is required and site tenants can respond in writing with objections to those proposed changes. The management, although they are required to respond back to the objections, are not required to consider those objections and the changes can (and usually do) still take place.

Often no consultation is even undertaken and notification is provided of the changes that have already taken place.

For example many parks have experienced issues around parking. In one residential park there is a rule that states no cars are to park on the road and they must park in allocated parking spaces. The manager was inconsistent in his application of this rule and in some circumstances site tenants and their guests who parked inappropriately were not notified by the manager, and yet others were, often with threat of a breach of duty.

In one particular caravan park one of the rules explicitly states there are no pets allowed. Once again this is applied inconsistently and many residents do have pets while others have been told they are not allowed to have pets.

A consultation process would be beneficial whereby not only must a manager consult with residents/site tenants about proposed changes but a vote could be conducted and a majority (75%) of residents/site tenants have to vote yes for a rule, or a change, to be implemented.

28. What reforms, if any, are needed in relation to how the Act regulates the rights associated with communal park facilities for permanent residents?

A proportion of residents/site tenant's site fees pay for the use of communal facilities, as well as the assurance they will be repaired, maintained and kept clean. In practice however it does not always appear that managers understand this and rules are made that restrict access or that even force residents/site tenants to undertake tasks that are the responsibility of the management.

One residential park made changes to the hours the communal facilities are open without consultation. This has caused some level of upset within the park and has made some people feel as though their movements within the park are being restricted. There were also issues in the past where site tenants were told they must clean the toilets and vacuum the club room after each use.

One caravan park also changed the rules for accessing the common room. After being open and accessible 24 hours a day it was locked up and could only be accessed by request and consent. This was undertaken without consultation and residents were upset because part of their site fees pay for the use of the communal facilities. It was then used as storage so if residents did want to use it there was little space, it was dirty and posed some health and safety risks.

Given residents and site tenants are paying to be able to use communal park facilities any changes to the rights associated with their use should be done through consultation, once again with a vote. It must also be made very clear to management they have responsibilities to look after those facilities.

29. **What measures should park operators take to promote a harmonious park community, and what should a park operator's obligations be where an individual resident's conduct does not breach their agreement but negatively affects other residents?**

30. **How could the Act be amended to better assist park operators in promoting a harmonious park community?**

31. **What responsibilities should park residents owe to each other under the Act in terms of their conduct, and what should happen if those responsibilities are not met?**

In response to the 3 questions above HAAG acknowledges there are many issues that can arise within a communal environment where residents and site tenants live in close proximity. That being said the Act does contain procedures for breaches of duty and perhaps incidents that arise between occupants need to be better reflected in those provisions.

The issues paper mentions that industry stakeholders believe the 'no specified reason' notice to vacate is an important tool in these circumstances yet they are rarely used. If they are rarely used then it can be argued they will not be missed if they are excluded from the RTA.

The issues paper also states that it may be difficult for a park operator to establish adequate proof that someone has displayed problematic behaviour. HAAG's concern is that any provision that does not require proof can potentially be used inappropriately by residents/site tenants and managers against people they may not like. It is essential that evidence is provided in these circumstances, especially when someone is at risk of being evicted.

32. **What reforms, if any, are required to ensure that liability under the Act for utilities in parks aligns with current marketplace practices?**

One area lacking in clarity relates to repairs and maintenance of site infrastructure related to utilities and utility connections. Sometimes there is confusion about

where the responsibilities of the park operator end and where the resident's/site tenant's responsibilities begin. It would be beneficial to make this clear in the Act to ensure no disputes arise if there is a fault or failure.

Within many caravan and residential parks operators supply and sell electricity through an embedded network. This results in a number of exemptions for the park operators and a loss of protections for the residents and site tenants.

The shift towards a model focused on permanent housing for pensioners, coupled with the rising cost of living, has resulted in residents expressing concerns about:

- Their lack of choice in electricity retailer,
- Their inability to access the Energy and Water Ombudsman (**EWOV**),
- The cost of supply charges,
- The difficulties encountered when there is an electrical fault or failure in the park,
- Inadequate billing information,
- Lack of notification when charges are increased,
- Meter reading processes,
- Their inability to secure solar panel benefits, and;
- The lack of information provided upon entry into the park about the embedded network system.

The Department of Environment, Land, Water and Planning (**DELWP**) has reviewed the General Exemption Order (**GEO**) related to embedded networks and produced a draft position paper. HAAG submitted a response to the draft position posed by the DELWP and the next step will be the release of a final position paper that will outline the amendments to the GEO.

HAAG's response can be accessed here:
http://www.oldertenants.org.au/publications/haag-submission-general-exemption-order-position-paper

Where the RTA and the GEO intersect relates to the level of charges being passed on to residents/site tenants by the park operator. The Essential Services Commission (**ESC**) sets the maximum rates allowable but the operator is also not to charge more then they are being charged by their supplier. It is difficult to know if the two align and there is no easy way to find out how much the operator is being charged. The Act should provide a clear and easy process to ensure there is transparency and disclosure provided by park operators in relation to utility charges.

It should also be made clear in the Act that there is a link to the GEO and in the event of a dispute the authority responsible for monitoring and enforcing supply of energy through an embedded network should be clearly stated within the RTA.

34. How could the Act be amended to provide remedies to residents where caravan park planning requirements are not met?

Park planning requirements are contained within the *Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and Standards) Regulations 2010* (which will be referred to as the 'regulations' throughout this section).

Currently registration requirements sit with local council and are undertaken every 3 years. There is no central register of caravan and residential parks, which makes it difficult to keep track of changes and growth within the sector.

HAAG members believe there is a need for a central public register of parks and that CAV should be the authority to administer it. CAV currently has a public register of retirement villages and it is suggested that something similar be compiled for parks as well, only with more in-depth information provided to the public such as how many sites and permanent residents/site tenants there are.

Another key concern within the regulations relates to the exemptions in place for moveable dwellings from the Building Code of Australia (**BCA**). Although Local council has some responsibility in relation to the construction and installation of moveable dwellings operators do not require an inspection, building permit or certificate of occupancy. There are many instances where homes have not being built properly from the beginning and virtually begin to fall apart as soon as someone moves in or alternatively the land, and the foundation, upon which the homes are built on is unstable and results in homes sinking and splitting.

Some examples of homes not being built properly include: toilet plumbing not being connected, shower drainage not being properly connected, foundations not being built properly and therefore not being able to properly sustain a dwelling.

Examples of where park operators have put people at risk in the general environment are electrical cords being run through water drains or hanging off trees within the park.

It has been suggested that moveable dwellings should be built to a higher standard and should not be exempt from such a large part of the BCA. This would include providing local government with authority to undertake inspections, issue building permits and ensure the code was complied with. Purchasing a dwelling is an expensive, long term investment and the product should be sustainable and sound. It is also important that there is regular inspection of the general park environment to ensure no one is being put at risk.

HAAG has often found that the duties contained within the regulations are not well known by residents/site tenants, by operators and sometimes even by local councils. This information should be made much clearer to ensure there is clarity around the responsibilities contained within them.

For instance emergency management planning is often lacking and residents and site tenants may not know what to do in an emergency. Fire drills are not conducted and communication regarding emergency procedures is often not well communicated by park operators. These procedures need to be better regulated and enforced in the event an emergency does occur.

Many residents and site tenants have also expressed concern about the difficulties that can occur when emergency services try and access the park, such as an ambulance. Park operators can often make it difficult and not be available to let services in. The regulations state that emergency services must be allowed access to the park at all times without delay but if this is not complied with it is unclear which authority is responsible for enforcing this provision.

35. What issues arise with the monitoring and enforcement arrangements for the regulation of caravan parks and residential parks, for example by local government, and how could these be strengthened?

The main issue arising in relation to the monitoring and enforcement of the regulations is that it is unclear which authority is responsible to enforce them.

Local councils, DELWP, local fire authorities and CAV all play some part in the application of the regulations. In reality though when any of these entities are approached there appears to be little they can do, or are willing to do, to ensure park operators comply.

Over the years HAAG has received a variety of responses from local councils when approaching them for assistance with park regulations. Some local councils believe they have no jurisdiction to enter the park and enforce regulations because they are private property.

There must be a clear line of authority for the enforcement of the regulations and clear compliance processes, with consequences, if operators fail to fulfil their responsibilities. This needs to be set out in the Act and regulations, and clearly disclosed to residents and site tenants, in the event of a dispute.

36. What are the particular needs of park residents in relation to park and dwelling modifications, and how would these be best addressed in the Act?

Moveable dwellings are generally built with a simple and standard design and manufacturers 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. Although many people are mobile when they first move into a park at some point they may require modifications to enable to remain independent and active and this must be taken into account in a housing market targeted specifically at people over 55 years of age.

Dwellings can be modified on the inside by the site tenant as they please. This comes at extra cost because the original design is not very accessible. The majority of dwellings have steps upon entry, narrow doorways throughout and are not designed for disability or ambulance stretcher access. Residential park living needs to consider the changes to mobility and health that may occur with age, especially consideration of easy access for emergency services.

The aesthetic of the park 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.

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.

There are also 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.

The Act could provide for minimum standards for both the design of moveable dwellings and also for the park environment, including communal facilities. It could also have a provision that would not allow a park operator to unreasonably consent to external modifications, especially if they were medically required. This would perhaps be much more appropriate when considering stand alone legislation.

37. What other issues arise in relation to residency in caravan parks or residential parks?

Stand-alone legislation for residential parks could better take into account rent and fee protection in acknowledgement that the majority of site tenants are on a fixed income and are over 55 years of age. Generally people move into a residential park to stay there for the rest of their lives and they tend to invest the majority of savings in their homes. Affordable fees could ensure the liveability of villages and protect the long-term viability of the business.

Dispute resolution is a big concern for many site tenants. Although this has been addressed within HAAG's response to the 'dispute resolution' issues paper it is worthwhile reiterating here due to its importance.

The complexity of this housing type creates many uncertainties when considering more formal legal action and often a lack of clear protections leaves people feeling doubtful they will have success.

Many site tenants feel they are up against a 'big business' that can afford to hire solicitors and advisors and this imbalance of power is often the aspect that deters people from challenging the park operator. There has been a history of fear within residential parks, mostly concerning the repercussions that might arise from taking any formal action. For older people the risk often feels greater should there be an unsuccessful outcome.

Older people prefer a non-confrontational approach to dispute resolution that is low, to no, cost and provides expert advice. HAAG members would prefer a retirement housing ombudsman although they recognise that VCAT must still be available and accessible to them. VCAT's processes and procedures need to be reviewed in order to make it more user friendly, timely and effective.

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