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**By email: LSIC@parliament.vic.gov.au**

**Inquiry into the Retirement Housing Sector**
**Legislative Council**
**Legal and Social Issues Committee**

This submission is a response by Housing for the Aged Action Group (**HAAG**) to the inquiry into the retirement housing sector.

**About Housing for the Aged Action Group**

HAAG is a member-based, not-for-profit organisation. Our members are mostly older residents and tenants from a variety of housing types across Victoria, and our committee of management is representative of the same.

HAAG operates an older persons housing information and support service, named Home At Last (**HAL**). HAL offers free, confidential advice, support and advocacy to older people who are homeless, at risk of homelessness, or wanting to plan their housing future. Another part of the HAL service is funded by Consumer Affairs Victoria (**CAV**) to provide tenancy and retirement housing information and support services to vulnerable and disadvantaged older Victorians.

The funding provided by CAV enables HAAG to assist tenants and residents living in private rental, caravan and residential parks and villages, retirement villages (mainly not-for-profit), Independent Living Units (**ILU**s) and rental villages throughout Victoria.

HAAG also facilitates and supports working groups made up of older residents and tenants living in caravan and residential parks and villages and ILUs. HAAG would like to acknowledge that this

submission was compiled with contribution from our working group members and from the knowledge gained through HAAG's extensive casework experience.

HAAG would also like to acknowledge and support the submissions by Consumer Action Law Centre (**CALC**) and Residents of Retirement Villages Victoria (**RRVV**). We have all worked collaboratively, along with Council on the Ageing (**COTA**), for over 2 years towards reform in the retirement housing sector and this inquiry is a welcomed result.

**Retirement Housing**

In Victoria the term retirement housing covers a myriad of housing types, far beyond the traditional retirement village model most people are familiar with. The following forms of housing will be considered in HAAG's submission:

**Caravan parks**

Caravan parks, regulated by the *Residential Tenancies Act 1997* (**RTA**), have traditionally provided affordable, holiday accommodation often also allowing for permanent residency in low numbers.

Over time the industry evolved to provide larger numbers of sites allocated for permanent residents, which many retirees and lower income groups took advantage of. This resulted in many parks offering a mixture of tenure arrangements. As land value increased, especially in coastal areas, many parks closed and/or sold to developers resulting in less availability of permanent park living.

Over the years operators have begun to target a more specific market for their park, choosing either to move towards purpose built, permanent living or back towards the tourism market. Although mixed tenure developments still exist their numbers are dwindling.

**Residential parks / Residential villages**

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

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

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

**Independent Living Units / Not-For-Profit retirement villages**

During the 1950's the Australian Government passed the *Aged Persons Homes Act 1954* (**APHA**) which funded churches, charities, and not-for-profit organisations to provide housing for older people. As a result 34,700 ILUs were built over a 30 year period providing affordable housing for low income older people. In Victoria approximately 9,000 units were built during this period.

During the 1980's funding provided under the APHA ceased. As a result two models of ILUs have developed over time: those covered by the *Retirement Villages Act 1986* (**RVA**), now known as NFP retirement villages, and those covered by the RTA, usually known as ILUs. Both models have similar characteristics, usually bedsitter or one-bedroom units in small clusters, with very limited (if any) communal facilities and spaces. The main differences lie in the financial model.

Not-For-Profit (**NFP**) retirement villages make up approximately 50% of the entire retirement village sector although these numbers are beginning to decrease.

**Rental Villages**

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

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

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

It if often unclear whether particular villages should be considered rooming houses, due to the combination of independent units with communal facilities, or residential tenancies, as the units are substantially self-contained. This creates significant confusion as to the rights and obligations of the parties under their agreements. It is also unclear how the additional services provided are regulated, such as the quality of food, which causes many difficulties for residents.

More currently many villages have begun to change their financial model so some are now covered by the RVA but still allow for tenancy arrangements as units are sold to investors.

For a more comprehensive background to the Victorian retirement housing sector and all forms of retirement housing please refer to Appendix A.

**Summary of recommendations:**

1. The government needs to reconsider its role in the retirement housing sector. A commitment needs to be made by government to provide, and support organisations to provide, affordable, secure, appropriate and innovative housing for older people.

2. There needs to be relevant, up to date information available on housing options and vacancies in a central point that is preferably funded by government.

**Caravan Parks**

3. Provide appropriate minimum lease terms with options for renewal and mandatory written agreements for caravan park residents.

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

5. Ensure that rules are consistently applied by managers and operators, with penalties for a lack of compliance.

6. Legislate that training for managers and operators is mandatory, with accredited standards, and must be renewed every 5 years.

7. Introduce a retirement housing ombudsman that could assist caravan park residents to resolve disputes.

8. Appropriate terminations provisions should be prescribed, such as extending notice periods and removing the 'no specified reason' notice, therefore only allowing eviction with clear reason and Victorian Civil and Administrative Tribunal (VCAT) order.

9. In the event of sale, park closure or change of use there should be specified compensation provisions, such as covering the cost of relocation for residents, so ensure residents do not experience disadvantage or hardship.

10. Rent increases should be annual, calculated according to CPI retaining the current 60 day notice period and the prescribed form.

11. Written agreements should provide a clear purpose and breakdown for the rent. This is important in the event that residents feel they are not receiving what they are paying for. If a

clear purpose and explanation of rent was provided it could more easily be clarified in the event of a dispute.

12. Park operators must provide consent, where reasonable, to residents who require modifications to make the park, their site and their dwelling accessible. Consent should not be unreasonably refused especially if the resident has a medical certificate.

**Residential parks/residential villages**

13. 30 to 50 year fixed term leases would be an appropriate level of security for site tenants.

14. Standard, written site agreements should be made mandatory and developed by government.

15. Termination provisions should be limited and comparable to those outlined in the RVA, the UK Act and the North Ireland Act. This explicitly includes the removal of the 'no specified reason' notice to vacate.

16. Residential parks in Victoria require stand alone legislation in order to appropriately protect site tenants. In the event of the sale of a park site agreement should be binding on the new owner.

17. In the event of the sale of a park site agreements should be binding on the new owner.

18. Legislation should provide for strong compensation provisions for site tenants in the event of a sale, closure or change of use of a park.

19. Standalone legislation could take into account rent and fee protection for site tenants by providing limits on rent increases. Site fee increases should be legislated to occur annually and according to CPI or 5%, whichever is the lessor, retaining the 60 day notice period and the prescribed form.

20. Site agreements should outline a purpose and explanation of site fees, stating clearly what they include. In the event that site tenants feel they are not receiving due service or they are seeking a rent assessment or rent reduction, this could potentially make it much easier to r It should be up to the site tenant whether they choose to spend extra money to improve the home for sale. No refurbishment costs should be charged by the operator.

21. It should be up to the site tenant whether they choose to spend extra money to improve the home for sale. No refurbishment costs should be charged by the operator.

22. Only one charge, either a sales commission or an administration charge, should be payable upon exit and the percentage should be comparable to those charged by independent agents. It must also be made clear that it can only be charged if the park acts as the selling agent for a site tenant.

23. Remove DMFs from the residential park industry or alternatively provide a 10% cap on DMFs to be calculated from the original purchase price of the dwelling. If they are to be charged they must also have a clear purpose.

24. HAAG members believe the liability to pay site fees after vacating the park should be limited to six months, until a new owner takes possession, or the end of a lease term – whichever is the lesser – and should be paid out of the settlement of sale. The site fees should be set at a lower level to reflect the reduction in services being used, such as utilities and communal facilities. This would take into account the hardship someone might experience having to pay daily care payments, as well as site fees.

25. Legislation needs to clearly state that operators must not refuse an agent entry into the park and that 'open for inspections' be allowed. Dwellings should also always be valued independently.

26. Where a park operator is appointed to act as agent there should 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.

27. No visitors charges should be allowable.

28. Clear disclosure provisions should be included in legislation, with penalties if the operator does not comply, to ensure prospective buyers are well informed about their rights and costs related to park living.

29. Ensure strong standards are introduced and regulated in relation to the design and construction of moveable dwellings and residential park environments to enable access, adaptability and safety.

30. Ensure there are similar standards in place for moveable dwellings as there is for regular construction.

31. Provide local government with more power to oversee and inspect construction and installation of moveable dwellings in residential parks and villages, as well as the overall environment, to ensure a high standard is adhered to.
32. Provide strong guarantees and warranties for new homes in recognition of the long-term intention of the exchange and the significant investment.

33. Legislate clear rights and responsibilities when it comes to the need for repair and maintenance on the site, which includes; the land and any infrastructure and fixtures that do not belong to the dwelling or the site tenant.

34. Change the identity of the sector by providing stand-alone legislation that re-defines the type of housing and arrangement being provided.

35. Legislate mandatory training for managers and operators, with accredited standards, that must be renewed every 5 years. Ensure police checks are also undertaken so that managers can fulfil a 'fit and proper' assessment.

36. Residents committees in residential parks should have a recognised, legislated status and role, and site owners must consult with the committee in relation to issues impacting on site tenants.

37. Residents committees in residential parks should be able to take matters to VCAT on behalf of the majority of residents in the park.

38. Fund specialist services better, both advocacy and legal services, to provide more comprehensive information, advice and support to site tenants.

39. Streamline and simplify VCAT processes and procedures to ensure there is equitable access to justice.

40. Introduce a retirement housing ombudsman to improve access to justice and dispute resolution for site tenants.

41. Improve information resources for site tenants that provide plain English explanations about rights and responsibilities.

**Independent Living Units under the *Residential Tenancies Act 1997***

**42.** HAAG members believe 5 to 10 year leases for ILUs are reasonable, with a legislated option to renew which is decided by the tenant.

**43.** Standard written agreements would be beneficial.

**44.** Legislation must consider the security of an ILU tenant in the event of a sale, closure or redevelopment to ensure any current agreements are honoured and the tenant is not left homeless.

**45.** ILU providers should be responsible by law to provide relocation assistance to tenants should they plan a forced eviction due to sale, closure, demolition or re-development.

**46.** Recalling that organisations originally received government subsidies to provide housing for older people, both state and federal governments need to reconsider supporting these organisations to maintain and develop their current housing stock.

**47.** It should be mandatory for providers to provide accessible and adaptable housing based on the age-specific nature of the model, or alternatively to modify units and village environments on a needs basis.

**48.** HAAG members believe that the RTA must require that where an assessment made by a medical practitioner states there is a requirement for modification it must be addressed by the provider, and that a tenant/resident able to fund their own modifications must not be unreasonably refused.

**49.** HAAG members believe rent increases under the RTA should be formulated according to annual CPI increases, and according to 25% of income as per the pubic housing formula, to ensure this remains a financially viable option for pensioners and for providers.

**50.** The current 60 days notice period for an increase should be retained along with the prescribed form that operators must use.

**51.** Written agreements should outline clearly the purpose of the rent and the facilities and services provided.

**52.** Make a retirement housing ombudsman available for ILU tenants.

**53.** Legislate clear communication processes between tenants and management.

**54.** Ensure the RTA appropriately regulates the rights and responsibilities applicable to the communal areas of ILU living.

**Not-For-Profit retirement villages**

**55.** The Retirement Villages Act 1986 must be comprehensively reviewed.

**56.** Standard contracts would be beneficial.

**57.** There needs to be a specially funded service to provide legal advice to residents of retirement villages.

**58.** Termination provisions need to be updated but kept limited, and the termination processes need to be clearly legislated and regulated.

**59.** Legislation must consider the security of a NFP retirement village resident in the event of a redevelopment to ensure any current agreements are honoured and the tenant is not left homeless.

**60.** NFP retirement village providers should be responsible by law to provide relocation assistance to tenants should they plan a forced eviction due to sale, closure, demolition or re-development.

**61.** A resident must not be forced to move until they have found something appropriate for their needs.

**62.** Recalling that organisations originally received government subsidies to provide housing for older people, both state and federal governments need to reconsider supporting these organisations to maintain and develop their current housing stock.

**63.** It should be mandatory for providers to provide accessible and adaptable housing based on the age-specific nature of the model, or alternatively to modify units and village environments on a needs basis.

**64.** HAAG members believe that the RVA must require that where an assessment made by a medical practitioner states there is a requirement for modification it must be addressed by the provider, and that a tenant/resident able to fund their own modifications must not be unreasonably refused.

**65.** Regulate DMFs and place a legislated cap on the percentage charged by operators.

**66.** Provide a provision in the Act that an operator must have a duty to mitigate their losses when reo that-letting a unit so that an exiting resident is not necessarily disadvantaged by having to pay the full 6 months of maintenance charges.

**67.** Ensure the aged care bond rule remains intact, at least until such time as the whole RVA is reviewed and the rule can considered in a more holistic context.

**68.** Set rent and maintenance charges at levels that do not create housing affordability stress.

**69.** NFP retirement village operators should not be exempt from the RVA.

**70.** Legislation should state that money earned by the operator from retirement village funds should be put back into the village, perhaps towards capital works and maintenance.

**71.** The RVA should legislate clear provisions for repairs and maintenance and whose responsibility they are, both inside units and for communal areas and facilities. They must be undertaken within an appropriate timeframe and with the least amount of inconvenience to the resident.

**72.** Clear up front disclosure about the rights and responsibilities of residents and operators is required for prospective residents, with penalties for operators that do not comply.

**73.** There should be legislated industry standards to ensure operators and managers are appropriately trained to manage a retirement village and to interact with older people.

**74.** Consumer Affairs Victoria should have a more active and visible enforcement and regulatory role to ensure operators and managers comply with their obligations under the law.

**75.** HAAG members wholeheartedly believe there is a need for a retirement housing ombudsman that would provide free, fair and effective dispute resolution services to older residents of all retirement housing types. HAAG has been working collaboratively with CALC, Council On The Ageing (COTA) and Residents of Retirement Villages Victoria (RRVV) to encourage government to adopt this approach.

**76.** HAAG believes that VCAT should have a retirement villages list, separate to the civil claims list, to ensure a more efficient avenue to take legal action should it be required.

**77.** Government should fund a service to provide free legal advice and support specifically for retirement village residents.

**Rental villages**

**78.** Similar to ILUs, due to the age-specific model legislation should ensure security of tenure is provided. Most tenants view rental villages as their "final home" and the legislation should reflect this intention.

**79.** Minimum 10 years leases should be provided and the 'no specified reason' notice to vacate should be removed.

**80.** There should be requirements in legislation for the operator to relocate the residents in the event of a sale, or for the new owner to be bound by the conditions of the previous owner's agreements.

**81.** Given the age specific nature of this housing rent should be set at a lower percentage with rent increases calculated according to CPI and given annually with the retained 60 day notice period and prescribed form.

**82.** Other services, such as the provision of meals and linen service, should be set as separate costs and should only be payable if utilised therefore providing tenants with choice.

**83.** A written tenancy agreement should always be provided to tenants and must include a clear explanation of what rent covers and what service costs covers. In the event of a tenant requesting a rent assessment or seeking a reduction in their rent this would make the process much easier.

**84.** Rental village operators must be bounds by all parts of the RTA and penalties should apply if they are found not to comply.

**85.** Clear disclosure provisions should be included in the Act to ensure residents understand what their rights and responsibilities are, as well as those of management.

**86.** Modification provisions should also apply to this form of housing, as outlined above in relation to ILUs and NFP retirement villages.

**Introduction**

The two main pieces of legislation under which HAAG undertakes its retirement housing casework are the *Residential Tenancies Act 1997* (**RTA**) and the *Retirement Villages Act 1986* (**RVA**). These will be the focus of this submission although comments may be made relating to other pieces of legislation that overlap and weave through the sector.

Some of the common problems experienced by older residents that contact HAAG in retirement housing are:

- Complex and inadequate contracts,
- Unfair and excessive fees and charges,
- Inadequate service provision, such as repairs, maintenance and meals,
- Bullying and intimidation by management,
- Exemptions in law,
- Lack of understanding of rights and responsibilities (in law and in contractual arrangements) both by residents and management, and;
- Eviction and breaches of law and contract.

**Terms of reference to be addressed by this submission:**

1. **Existing legislation that relates to retirement housing, in particular recommendations for reform of retirement housing legislation to ensure it –**
    a. **Reflects the diversity of retirement housing types;**
    b. **Includes proper consumer protections, dispute resolution procedures, fair pricing, and consistent, simplified management standards and regulations across the sector; and**
    c. **Has a focus on dignity, respect, appropriate care and quality of life for retirees;**

**2. Comparable reviews and recommendations for reform in other Australian and overseas jurisdictions;**

**4. The option to appoint a retirement Housing Ombudsman.**

HAAG provides information to older people wanting to plan for their retirement housing future. Approximately 20% of people that contact the retirement housing service are seeking information about their retirement housing options.

The retirement housing options available depend on a persons income and asset levels. The spectrum HAAG utilises focuses on independent living and ranges from ILUs and NFP retirement villages, residential parks and for profit retirement villages and semi-supported housing types.

A copy of HAAG's housing options booklet, titled 'Finding a Home', is contained in Appendix B.

Although it would appear the spectrum caters for older people in all income and asset brackets the reality is the availability of many options is limited, especially those catering for lower income groups. The number of people needing to access these housing types creates competition and lack of regular vacancies. This makes it difficult for organisations like HAAG to provide relevant, helpful and appropriate information for older people seeking more secure and affordable housing. It is also a difficult process for older people to navigate in order to find suitable housing.

*Case study – Lack of housing options:*

*HAAG's retirement housing service provides housing options information to people who are ineligible for public and social housing. Generally people requiring this information will have between $30,000 and $150,000 in savings and/or superannuation. The most appropriate housing option in these circumstances are ILUs or NFP retirement villages but unfortunately the availability of options are scarce.*

*One woman recently contacted the service currently living in private rental with approximately $130,000 in superannuation. She was receiving services from the local Council and expressed that she would like to stay within that area for a continuation of support. Unfortunately there were no appropriate housing options within her local government area which meant looking further afield to try and find something suitable.*

"The importance of ILUs [including NFP retirement villages] as a social housing option for older persons is hardly recognised in policy debate about housing options for older low income people"[1], which is why they can be viewed as a forgotten housing sector. In general when housing strategies are formed older people, and more specifically older person specific housing types, are often left out of the equation.

Many ILUs and NFP retirement villages are built on valuable, well located properties and due to ageing housing stock many organisations are selling properties to developers, or redeveloping

[1] McNelis, 2003, pii

their own properties into a more up-market, and expensive, form of retirement housing. This means a loss of housing options for this income group.

*Case study- Village redevelopment:*

*One group of residents recently were told their village site was to be demolished and re-developed into a more expensive retirement village. The village is in a prime location and the residents had believed this would be their home for life.*

Caravan parks have also catered historically to people on lower incomes and even this industry is dwindling once again due to land value and locations, but also due to changes in the industry profile. Some operators are moving away from providing permanent housing while others are moving towards the more affluent purpose-built residential park market.

*Case study – Caravan park change of use:*

*A regional caravan park resident contacted HAAG recently having received a notice to vacate. The park operator decided to change the use of part of the park and put in more permanent dwellings along with a sales yard for moveable dwellings.*

*Concerns were rife due to some residents being told they could relocate within the park and others being told they must leave completely. Many residents are aged between their 60's and 80's and are concerned about the cost of moving and finding alternative accommodation. Many dwellings will be unable to be moved.*

*The park has offered some level of compensation but not enough to assist people to relocate.*

*When asked if they would like HAAG to come out and chat to the residents there was a fear that perhaps the park operator would see that as a threat and would renege on the promises made so residents have decided to lie low, stay quiet and see what happens. This is extremely concerning given their home and security is at risk.*

Even entry level costs within the residential park industry are increasing with many new, purpose-built parks charging in excess of $300,000 for a moveable dwelling. One residential park located by the water charges in excess of $400,000 for a dwelling located on the waterfront. Although there is a long term lease provided $400,000 only buys the dwelling. Ongoing fees are still paid and there is no ownership over the site.

These major changes, and the lack of presence of older people in housing policy discussions, are causing large gaps in the retirement housing sector, especially for those with lower income and

asset levels. There is an overall housing crisis for older people that must be addressed, to ensure that the growing ageing population is appropriately catered for.

"Many ILU organisations.... have experienced a drop in demand from their traditional target groups"[2] with older people having higher expectations of the type of housing they want in retirement. In fact it is rare that older people are asked about their housing preferences.

*Case study – Changes in trends:*

*One NFP retirement village operator decided to close down one of its sites after it could not fill a number of vacancies. Half the village at the time was empty and the ingoing contribution was $90,000, on top of ongoing fees and exit fees. When asked why they thought vacancies were difficult to fill the operator stated they had found that older people in that area did not want to live in that style of housing, even if units were refurbished and fairly comfortable.*

*As a result of this change in demand they decided they could not maintain the village any longer as it needed significant capital works undertaken so they informed the remaining residents they would have to relocate.*

HAAG is currently undertaking a project to document the experiences of residents in ILUs, which to our knowledge has never been done before, and the project will be completed by 31 July 2016. We will provide the committee with a copy of the final report once it is completed to consider within the inquiry.

Our current spectrum of retirement housing revolves around a very generic form of communal living. We have very few, if any, innovative retirement housing models in Victoria and this is something that desperately needs to change.

Many residents, especially those living in bedsitter or 1 bedroom units, state they would like more space. Older people tend to use their home more thoroughly and would like an extra bedroom to be able to undertake a creative pursuit or have family stay over. What they enjoy most about retirement living is that generally external maintenance is undertaken by the operator which is what older people tend to want most.

Although some older people like the age specific housing model, some people would like their housing to be more connected to the local community. Many HAAG members share they would like to be more consulted when it comes to their housing and the decisions made for, and about, them.

[2] McNelis, 2003, piv

HAAG's casework reveals that most residents of retirement housing are single woman and the sense of safety and security is a drawcard for this particular demographic. That being said sometimes it can lead to a feeling of isolation and in reality they would also like to have links to the wider community.

An example of an international housing model that incorporates retirement living with local community is the Humanitas model. Homes are provided to own or rent and are adaptable as people age and their needs change. Living arrangements are separate to care services thereby providing choice to residents and tenants, although they can be acquired on-site. The lower level of the building provides spaces that are open to the public, such as bars, cafes and shops, to encourage mingling. To read more about the philosophy of this model refer to Appendix C.

**Recommendations:**

1. **The government needs to reconsider its role in the retirement housing sector. A commitment needs to be made by government to provide, and support organisations to provide, affordable, secure, appropriate and innovative housing for older people.**

2. **There needs to be relevant, up to date information available on housing options and vacancies in a central point that is preferably funded by government.**

The Victorian government is currently undertaking a review of the RTA, which includes reviewing the rights and protections of residents in caravan parks, residential parks, ILUs covered by the RTA and rental villages. This submission will include HAAG's key concerns and recommendations as they appear in our review submissions.

The government is also reviewing access to justice for vulnerable and disadvantaged people, excluding RTA matters which are covered by the RTA review. HAAG's response focused on dispute resolution related to NFP retirement villages and our key concerns and recommendations will also be included in this submission.

This submission will also include responses to areas of legislation and regulation that are not currently under review but that must be considered when making any future recommendations, such as the *Residential Tenancies (Caravan Parks and Moveable Dwellings) Regulations 2010* and the *Retirement Villages Act 1986*.

**Caravan parks**

Permanent residents in caravan parks may reside in and own a dwelling (owner/renter) which often includes a caravan and an attached annex, or alternatively they may rent the dwelling and the site (renter/renter).

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

Permanent residents in caravan parks were not recognised by law until as recently as 1986. "Local government planning authorities subsequently allowed traditional caravan park owners to designate a proportion of their sites as long-term",[3] resulting in what we now know as the 'mixed use park'.

Caravan parks have been defined as a marginal housing type, and there is "growing recognition that the demand... will intensify over the coming years because of the lack of affordable housing"[4]. However, many parks have closed due to higher profits being made from sale of well located, valuable land and residents often "fear potential closure and associated homelessness"[5].

Living permanently in a caravan park is seen positively by residents when there is choice, quality amenities, strong community and quality management[6]. It was also noted that "many older residents had chosen to live long-term in a caravan park for reasons of lifestyle choice... [T]heir long-term aspirations are to remain living in a caravan (park) for long as they are physically able"[7].

Currently security of tenure is not provided for under the Residential *Tenancies Act 1997* (**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.

There are often no written agreements provided to permanent residents either which means that rights, roles, and responsibilities are not clearly defined, and no tenure is outlined. Most caravan park agreements are periodic and therefore susceptible to the protocols enforced by operators, who can sometimes be difficult to deal with and unfairly wield their power, which often limits and constrains residents' lives in the park.

[3] Bunce, 2010, p2
[4] Goodman et al, 2012, p2
[5] Ibid, p1
[6] Wensing et al, 2003, p7
[7] Ibid, p44

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

Managers and operators should be trained to understand what their roles and responsibilities are, to in turn be able to communicate this information to residents, and must be held accountable for their behaviour and attitudes. There should be clear provisions in the Act to deal directly with inappropriate conduct by managers, preferably with significant associated penalties. The case study provided a little further below highlights inappropriate behaviour from management that went unchallenged because of the fear that was rife in that particular park.

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.

**Recommendations:**

3. **Provide appropriate minimum lease terms with options for renewal and mandatory written agreements for caravan park residents.**

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

5. **Ensure that rules are consistently applied by managers and operators, with penalties for a lack of compliance.**

6. **Legislate that training for managers and operators is mandatory, with accredited standards, and must be renewed every 5 years.**

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.

[8] Goodman,2012, p17

*Case Study – Incompetent management:*

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

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

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

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

*The five notices were served and in response the managers sent a letter to those residents requesting a meeting to discuss the matter further. During this meeting, which the residents had reluctantly attended, one of the managers was present. This manager attempted to film the meeting despite strong objections from the residents present, who considered this a form of intimidation. The residents were then warned there would be consequences for them, and other residents, as a result of their actions. The manager then also verbally abused one of the residents present, without provocation, by stating "and you - I wouldn't cross the street to piss on you if you were on fire".*

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

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.

Caravan park residents, it often seems, "have fewer rights and protection than tenants in private rental and therefore occupancy is more precarious and less stable"[9]. They 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.

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 the Victorian Civil and Administrative Tribunal (**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.

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 either.

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

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

[9] Goodman, 2012, p15

*Case study – Losing a home:*

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

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

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

**Recommendations:**

7. **Introduce a retirement housing ombudsman that could assist caravan park residents to resolve disputes.**

8. **Appropriate terminations provisions should be prescribed, such as extending notice periods and removing the 'no specified reason' notice, therefore only allowing eviction with clear reason and Victorian Civil and Administrative Tribunal (VCAT) order.**

9. **In the event of sale, park closure or change of use there should be specified compensation provisions, such as covering the cost of relocation for residents, so ensure residents do not experience disadvantage or hardship.**

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. "Stakeholders, residents and park owners and managers all cited failure to pay rent as the most frequent cause of loss of housing or eviction from caravan parks".[10]

Many caravan park residents have lower incomes and therefore rent increases should be calculated according to the Consumer Price Index (**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.

**Recommendations:**

10. **Rent increases should be annual, calculated according to CPI retaining the current 60 day notice period and the prescribed form.**

11. **Written agreements should provide a clear purpose and breakdown for the rent. This is important in the event that residents feel they are not receiving what they are paying for. If a clear purpose and explanation of rent was provided it could more easily be clarified in the event of a dispute.**

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

*Case study –Access and adaptability:*

*One caravan park resident in her 50's experienced a stroke which left her with more limited mobility. The dwelling she owned had steep entry stairs and the home itself was not equipped to provide easy access, An example was the inaccessible design of the bathroom and the lack of reinforced walls to accommodate rails. The resident also required a motorised wheelchair but had no place to store it when it was not in use.*

*The resident could modify the inside of her dwelling as she required but any improvements made on the outside had to be consented to by the park manager. A request for a ramp was rejected, as was a request for a shed to store the wheelchair. More appropriate stairs were built on the front of the unit but even consent for these was not easily gained.*

*Partly these decisions were based on land zoning issues but partly they were based on a strained relationship between the resident and the management. The lack of legislative protection in these circumstances also made this a difficult scenario to navigate, even for disability support services.*

[10] Wensing et al, 2003, p45

**Recommendation:**

12. **Park operators must provide consent, where reasonable, to residents who require modifications to make the park, their site and their dwelling accessible. Consent should not be unreasonably refused especially if the resident has a medical certificate.**

**Residential parks/residential villages**

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

Residential park residents, currently known as site tenants under the RTA, own their 'transportable' dwelling and rent the site on which it stands. Many site tenants invest their life savings in their retirement home and if they do not have secure tenure they are often living in fear of, or with misplaced trust in, the park and village operator. Lack of legislative protection leaves open the prospect of a major disaster occurring if a village owner decided to close their village and sell or convert the land into another commercial enterprise.

This failure of the residential 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.

Although long term leases are now standard practice with some of the larger operators in Victoria, security of tenure is still limited with a lack of consistency across the sector. Given this type of housing arrangement is targeted at permanent retirement living for older people security of tenure is a key issue.

Moving is more difficult as people age and feelings of insecurity can adversely affect the health and well being of older people. Research suggests that the affordability and suitability of housing and security of tenure can have an impact on health. "People in precarious housing had, on average, worse health than people who were not precariously housed. This relationship existed regardless of income, employment, education, occupation and other demographic factors"[11].

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. It must be made clear that in residential parks eviction means the site tenant, as well as the dwelling, must be removed off the site and out of the park.

*"For many older people, the option to live in a residential park represents an affordable lifestyle choice for retirement. Many retired people will invest their superannuation or the proceeds from the sale of their house in a small home".*[12]

[11] Mallett et al, 2011, p5
[12] Law and Justice Foundation, 2004

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.

*Case study – No reason notice to vacate:*

*One couple living in a residential park decided to try and organise a residents meeting on-site, around the time Part 4A of the Residential tenancies Act 1997 came into effect, to let HAAG talk both about Part 4A and about how to form a residents committee. Directly after the meeting the couple received a no-reason notice to vacate. It was struck out as it could clearly be shown it was served in retaliation, but this caused the relationship to severely break down between the couple and the park operator. This meant the couple moved out anyway.*

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"[13]. 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.

[13] Bunce, 2010, p10

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 susceptible to eviction.

Security should be inherent in this housing model. Residential park arrangements are complex and becoming even more so as the sector grows. One Victorian residential park company makes in excess of $16 million dollars profit each year and provides long-term security within their model. It is a lucrative business model and this particular company has been said to be "in a structural sweet spot"[14]. Victoria is still a fairly small market compared with states like NSW and QLD and there is minimal competition at this time within the Victorian market although, other investors are now beginning to enter the market recognising the untapped market potential.

**Recommendations:**

**13. 30 to 50 year fixed term leases would be an appropriate level of security for site tenants.**

**14. Standard, written site agreements should be made mandatory and developed by government.**

**15. Termination provisions should be limited and comparable to those outlined in the UK Act and the North Ireland Act. This explicitly includes the removal of the 'no specified reason' notice to vacate.**

HAAG also believes that residential parks require stand-alone legislation. It is no longer appropriate to include them in the RTA. It would also not be appropriate to try to include them within the RVA because of the complexities already inherent in that sector. Owner/renter arrangements in residential villages are different to leasehold and strata title arrangements in retirement villages therefore the unique and complex model provided in residential parks requires its own legislative considerations.

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.

That being said HAAG is supportive of a Retirement Housing Act which would include all forms of age-specific housing. We believe however the reality is still a way off and further discussion needs to be undertaken about the practicality of this.

[14] Jacobs, 2014, p33

**Recommendation:**

**16. Residential parks in Victoria require stand alone legislation in order to appropriately protect site tenants.**

There are no clear compensation provisions provided in the RTA, which means site tenants will generally have to bear the costs of moving themselves even if the circumstances are through no fault of theirs such as receiving a notice to vacate.

The RTA does not address the sale of a residential park either. Currently even with long term leases upon the sale of a park previous site agreements are not binding on the new site owner. Site tenants may be asked to leave if there is to be a change of use or redevelopment of the land and also if the park becomes insolvent. A study found "the possibility of eviction if the park was sold for redevelopment was concerning to 70 per cent of respondents"[15].

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

*Case study – Security of tenure:*

*HAAG worked with residents in one park, assisting them to access legal support to negotiate site agreements with a fixed lease term. This particular park has a freehold property owner and a leasehold business owner managing the park. It was made clear by the property owner that he bought the park as an investment. The park is in a prime coastal location and the value of the land would be significant.*

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

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

[15] Bunce, 2010, p8

**Recommendations:**

**17. In the event of the sale of a park site agreements should be binding on the new owner.**

**18. Legislation should provide for strong compensation provisions for site tenants in the event of a sale, closure or change of use of a park.**

Security is also reflected in the affordability of living in a park. More site tenants, especially those relying solely on a pension, are now concerned about the long-term viability of this housing in relation to the ever-increasing costs and complex financial arrangements.

Rent, also called site fees, may vary from $120 to $450 a fortnight. Site fee levels do not always reflect a pensioners' income affordability, and the cost of utilities and other living expenses can often result in concerns they will not be able to manage in the long term. There is never any clarity about what the rent covers which also makes it difficult to resolve cost disputes.

For older people on a pension, any fee and cost formulas used by residential park operators need to ensure park living remains sustainable long term and therefore secure. Currently the RTA does not provide any clear formula for rent increases and allows for market-based rent reviews, which can often place financial stress on site tenants. Site fees are usually increased annually, although sometimes every six months. The RTA allows for six-monthly increases.

Separate 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. 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.

**Recommendations:**

**19. Standalone legislation could take into account rent and fee protection for site tenants by providing limits on rent increases. Site fee increases should be legislated to occur annually and according to CPI or 5%, whichever is the lessor, retaining the 60 day notice period and the prescribed form.**

**20. Site agreements should outline a purpose and explanation of site fees, stating clearly what they include. In the event that site tenants feel they are not receiving due service or they are seeking a rent assessment or rent reduction, this could potentially make it much easier to resolve disputes.**

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

Exit fees, such as Deferred Management Fees (**DMFs**) and administration fees, are more prevalent in the sector now and can mean that site tenants often feel trapped in their situation because their housing options (and their finances) will be limited if they decide to sell and leave the park.

DMF's are not currently regulated by the RTA. 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 currently the percentage charged ranges from 15% to 40%. HAAG believes DMFs should not be charged in this sector. 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.

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.

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.

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

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.

*Case study – Excessive exit fees:*

*A recent example in a residential park saw a man leave the park to enter aged care. His family are currently negotiating the exit and re-sale costs related to their father's home. The park provided a 'quote' to the family stating that the final cost of exit fees would be approximately $85,000.*

*Here is how it was itemised:*

| | |
|---|---|
| *Administration fee =* | *$5307.50* |
| *Deferred management fee =* | *$59,118.28* |
| *Refurbishment and maintenance costs =* | *$20,462.47* |
| *Total exit fees =* | *$84, 888.25* |

*The family is currently trying to challenge the level of the exit fees, especially because the $20,000 in refurbishment and maintenance costs were decided and charged by the village without providing a choice to the family.*

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 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.

The process of sale can be difficult and can deter people from moving. Although the RTA allows site tenants to appoint independent agents, in practice operators can obstruct this process. Currently the law provides a disincentive for site owners to find a new site tenant because they have a guaranteed income. By limiting this it may encourage site owners to sell more quickly.

Of course 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. 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.

**Recommendations:**

21. **It should be up to the site tenant whether they choose to spend extra money to improve the home for sale. No refurbishment costs should be charged by the operator.**

22. **Only one charge, either a sales commission or an administration charge, should be payable upon exit and the percentage should be comparable to those charged by independent agents. It must also be made clear that it can only be charged if the park acts as the selling agent for a site tenant.**

23. **Remove DMFs from the residential park industry or alternatively provide a 10% cap on DMFs to be calculated from the original purchase price of the dwelling. If they are to be charged they must also have a clear purpose.**

24. **HAAG members believe the liability to pay site fees after vacating the park should be limited to six months, until a new owner takes possession, or the end of a lease term – whichever is the lesser – and should be paid out of the settlement of sale. The site fees should be set at a lower level to reflect the reduction in services being used, such as utilities and communal facilities. This would take into account the hardship someone might experience having to pay daily care payments, as well as site fees.**

25. **Legislation needs to clearly state that operators must not refuse an agent entry into the park and that 'open for inspections' be allowed. Dwellings should also always be valued independently.**

26. **Where a park operator is appointed to act as agent there should 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.**

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 mainly use the facilities in the home. Currently visitors 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.

All fees and charges should be clearly disclosed (amount, purpose, explanation and formulas) in written site agreements or 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 so there is no confusion and surprises.

**Recommendations:**

**27. No visitors charges should be allowable.**

**28. Clear disclosure provisions should be included in legislation, with penalties if the operator does not comply, to ensure prospective buyers are well informed about their rights and costs related to park living.**

Moveable dwellings are generally built with a 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.

*Case study – Difficult access:*

*One HAAG member who was active and mobile had to undergo hip replacement surgery. To enter her moveable dwelling she has steep stairs and during her recovery she struggled to access her unit due to difficulty manoeuvring herself up and down the stairs. In order to access her shower she also had to step in sideways and during her recovery this was not a movement she was able to undertake.*

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 from the outset. The majority of dwellings have steps upon entry, narrow doorways throughout and are not designed for disability or ambulance stretcher access. Residential park living is targeted at people over 55 years of age and needs to consider the changes to mobility and health that occur with age, especially consideration of easy access for emergency services.

The aesthetic of the village environment often results in park operators not allowing ramps to be put in at the front of a dwelling, but regardless of permission most park environments do not have enough room to build a ramp to standard at the front of a dwelling. This means it must be put in at the back or side door, usually running through a carport or garage, if the design allows for it.

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.

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"[16] and residents can stay on their site indefinitely. This means dwellings can appreciate in value because of their permanent occupation of the site.

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

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

[16] Bunce, 2010, p9

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.

*Case study – Immovable dwellings:*

*One woman phoned HAAG after her mother had passed away. The family wanted to take her moveable dwelling out of the park and put it on their property in regional Victoria. This woman had phoned a company that transported moveable dwellings and asked them to quote her how much it would cost to dismantle, transport and reinstall the dwelling.*

*A worker came out to the park to assess the situation and told the woman that he could not quote her because the park was unable to accommodate the vehicles required to lift up the dwelling in the first place.*

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.

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 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.

Although re-defining the sector might reflect arrangements more appropriately it is also important to consider the need to keep costs low as currently this sector provides a more affordable housing option for older people.

Other issues have resulted due to the exemptions in place for moveable dwellings from the Building Code of Australia (**BCA**). No inspection, building permit or certificate of occupancy is required. There are many instances where homes have not being built properly from the beginning and virtually beginning 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.

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.

*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 with much hostility from management, 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 and there are significant exemptions similar situations occur all too often.*

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

The lack of clarity around whose responsibility it is to maintain and repair sites also 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"[17] 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. Unfortunately Part 4A is the only part in the RTA that does not contain clear repair and maintenance procedures which causes disputes when it comes to responsibilities.

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

*Case study – Fence repair:*

*One site tenant required one of her site fences to be replaced. It had fallen down and been taken away by the site owner, but not replaced. The owner refused to respond to correspondence and after 12 months of attempting to make contact with management the site tenant decided to take the matter to VCAT.*

*Unfortunately the context of the VCAT application was no clear as there is currently no section in the RTA that spells out that fences are the responsibility of the site owner. In fact this particular site owner was telling site tenants that if they wanted to repair or replace fences they would have to pay for it, even though the fences were there from the beginning and were fixtures of the site.*

*Luckily the VCAT application was successful and the site owner was ordered to replace the fence.*

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.

**Recommendations:**

29. **Ensure strong standards are introduced and regulated in relation to the design and construction of moveable dwellings and residential park environments to enable access, adaptability and safety.**

30. **Ensure there are similar standards in place for moveable dwellings as there is for regular construction.**

31. **Provide local government with more power to oversee and inspect construction and installation of moveable dwellings in residential parks and villages, as well as the overall environment, to ensure a high standard is adhered to.**

32. **Provide strong guarantees and warranties for new homes in recognition of the long-term intention of the exchange and the significant investment.**

33. **Legislate clear rights and responsibilities when it comes to the need for repair and maintenance on the site, which includes; the land and any infrastructure and fixtures that do not belong to the dwelling or the site tenant.**

**34. Change the identity of the sector by providing stand-alone legislation that re-defines the type of housing and arrangement being provided.**

For site tenants issues with management are usually always intertwined with other complex matters. The complaints about management relate to poor people skills or a lack of communication. Complaints also pick up on a lack of knowledge and understanding from management about the rights and responsibilities of site tenants, and bullying and intimidation especially towards more vulnerable older people. This reflects the inherent imbalance of power between site tenants and 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 residential park. Currently there are no accreditation requirements and there are no set standards so anyone can be a manager of a residential park.

In the Wales Mobile Homes Act 2013 it states that the Secretary of State may not permit land to be used as a relevant site unless they "are satisfied that the occupier is a fit and proper person to manage the site of that a person appointed to do so by the occupier is a fit and proper person to do so".[18]

*Case study – Poor management conduct:*

*One residential park owner ended up bankrupt and in the process of administration someone bought the park. He had no prior experience managing parks and the site tenants soon found him to be difficult to communicate with as his lack of knowledge became more and more evident.*

*Some site tenants questioned him about a number of discrepancies in the finances and the way the park was being run and as a result the owner took to being verbally abusive towards them.*

*One woman in particular could no longer enter the office for fear the owner would speak to her inappropriately. This particular owner even denied HAAG access to the park to attend a residents committee meeting because he views the organisation as a threat as it seeks to inform and empower site tenants.*

[18] *Mobile Homes Act 2013*, (Wales), s12A (a)

**Recommendation:**

**35. Legislate mandatory training for managers and operators, with accredited standards, that must be renewed every 5 years. Ensure police checks are also undertaken so that managers can fulfil a 'fit and proper' assessment.**

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.

*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, achieve some key goals in the park and provide an avenue for socialising.*

*One main 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 requesting a way to work together to improve overall accessibility.*

*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.*

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.[19] 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.

In recent amendments made to the Scottish Mobile Homes Act 1983 it describes clearly what a residents association is[20] and states that the site owner must consult the association about matters which affect the residents.[21]

[19] *Residential Parks Act 2007*, (SA), section 9(1)
[20] *Mobile Homes Act 1983*, (Scotland), section 31(1)
[21] Scottish Government, 2013

**Recommendations:**

**36. Residents committees in residential parks should have a recognised, legislated status and role, and site owners must consult with the committee in relation to issues impacting on site tenants.**

**37. Residents committees in residential parks should be able to take matters to VCAT on behalf of the majority of residents in the park.**

Dispute resolution is a big concern for many site tenants. The current justice system can be intimidating and often people are hesitant to exercise their rights. 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.

VCAT's original premise of justice being available and affordable for the average person, with no legal representation required has changed. Park operators usually have solicitors present and this makes site tenants feel threatened. 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.

Alternative Dispute Resolution (**ADR**) processes have been used by some site tenants but the issue with mediation and conciliation is that any agreement made is not binding and requires the willingness of both parties to work together. This can be difficult where relationships are already strained.

*Case study – Alternative Dispute Resolution:*

*One site tenant was the president of the residents committee, and had been for a number of years. The caretaker appointed during that time decided he did not particularly like this person which resulted in strained communication and comments made by the caretaker about this person behind her back. This meant she could not fulfil her role properly and made it difficult to achieve any meaningful outcomes within the park.*

*HAAG supported the site tenant and tried to negotiate with management that the caretaker's conduct was inappropriate and there needed to be some resolution to move forward. The correspondence resulted in mediation between the site tenant and the caretaker.*

*HAAG attended the session as an observer and although it appeared to be somewhat successful it did not provide any long lasting change because there was no binding agreement at the end. In fact not long after this the site tenant resigned from her role as president of the committee partly because of the stress she had undergone during this process (which lasted over a number of months) and partly because her health was failing.*

Back in 2004 residents of residential parks first began presenting to HAAG with complaints about management mostly and the cultures of bullying and intimidation that were rife at the time. HAAG workers had to meet with residents off the park premises because they were too afraid they would be found out by the park owner. Nowadays although there is a greater confidence amongst site tenants there is still an underlying fear and concern that pushing a matter too far might result in eviction or being ostracised as a 'troublemaker'.

Although there are services that can provide support to site tenants they are few and far between. HAAG, as part of the Tenancy Advice and Advocacy Program (**TAAP**) funded by CAV, is the main service to assist site tenants although other TAAP services will take on residential park matters mostly dependent on merit. In HAAG's retirement housing service approximately 25% to 30% of matters are related to residential parks and villages.

*Case study - Trouble:*

*HAAG has worked with many residents who have exercised their rights, or made an attempt to, and as a result other residents viewed them as 'troublemakers' and did not want to be seen to be involved with their actions.*

*A meeting was held at one residential park where a member of the residents committee stood up demanding to know who had placed meeting notices in the letterboxes. Their attitude was intimidating to other residents and they had been known to bully residents who had spoken out in the past. As a result many people felt afraid to do anything that would gain them unwanted attention and generally chose not to do anything at all.*

CAV can provide basic information but often cannot deal with the complexities inherent in the sector and experiences by some site tenants show a lack of overall understanding or disconnect from CAV about this housing type. HAAG has undertaken many talks in residential parks providing information to site tenants about their rights and responsibilities. Especially in regional areas HAAG has always tried to invite CAV along to highlight to site tenants there are services available to support them. There have been a number of sessions where CAV has spoken about rights in general but was unable to address more detailed, complex questions or they spoke about retirement villages rather than addressing the correct regulatory framework.

There is a lack of overall information available to site tenants about their rights and responsibilities. There are also very few solicitors that understand the sector and are able to provide legal advice and support when required.

Everyday Law has a section about renting but it is not updated to reflect changes in the RTA that occurred in 2011 with the introduction of Part 4A for residential parks and villages. Nor does it provide a comprehensive list of support services. The Law handbook has nothing on residential parks.

**Recommendations:**

38. **Fund specialist services better, both advocacy and legal services, to provide more comprehensive information, advice and support to site tenants.**

39. **Streamline and simplify VCAT processes and procedures to ensure there is equitable access to justice.**

**40. Introduce a retirement housing ombudsman to improve access to justice and dispute resolution for site tenants.**

**41. Improve information resources for site tenants that provide plain English explanations about rights and responsibilities.**

Within many caravan and residential parks operators supply and sell electricity through an embedded network. This means that the park and village owners and operators supply and on-sell electricity to the residents and site-tenants which consequently leaves them in the position of a third party in an electricity supply arrangement. This results in a number of exemptions for the park and village owners and 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.

HAAG submitted a response to the review of the General Exemption Order undertaken by the Department of Economic Development, Jobs, Transport and Resources in August 2015, which is contained in Appendix D.

**Recommendations**:

- Residents and site tenants should be given clear information about what an embedded network is, and what rights and protections they have, and it should be a mandatory requirement,

- Choice of supplier should be made available to residents and site tenants or the park operator must obtain quotes for the most competitive costs and provide this information to the network customers,

- Embedded network suppliers should not be exempt from licensing,

- Charges should be comparative to receiving electricity directly from a supplier, including allowing for benefits such as off-peak rates,

- Residents and site tenants should most importantly have access to the Energy and Water Ombudsman (EWOV) which they currently do not due the exemptions granted upon the embedded network supplier.

**Independent Living Units (ILUs) under the RTA**

ILUs continue to be provided as a mostly affordable and relatively secure form of housing specifically for older people, although these informal protections could be more appropriately legislated. According to McNelis, 42% of ILU residents were aged 80 or over.[22] If considered in relation to other forms of low-income, older-person-specific rental housing, of which public and community housing are major forms, in 2003 ILUs formed "25 to 30 per cent of all stock specifically constructed for older persons".[23]

ILU tenants are a more vulnerable group and "older people are one of the least mobile population groups".[24] The concept of 'home' is important to older people. In research conducted about rental housing provision for older Australians it was found that "the vast majority were seeking permanency and viewed their rental housing very much as 'home'. Most had no plans to move with some suggesting that moving would be a terrible blow".[25]

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

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

[22] McNelis, 2004, p49
[23] McNelis, 2003, p13
[24] Jones et al, 2007, p43
[25] Ibid, p74

*Case study – Incorrect agreement:*

*One HAAG member moved into an ILU and came in because she had been asked to pay a $10,000 bond and rent without receiving receipts. She provided a copy of her agreement which stated it was a tenancy agreement and she was correct, it had a $10,000 bond, an amount which is unheard of in the rental sector.*

*Appendix E contains a copy of this agreement.*

*It turned out to be a NFP retirement village under the RVA. I explained this to the resident and gave her a booklet explaining her rights under the RVA. I explained that the agreement was incorrect for the tenure type and suggested she speak to the manager, or that I could do so on her behalf.*

*Although she was concerned about the discrepancies she did not want to do anything for fear the organisation would try and evict her or make her life difficult. She was very grateful to have a roof over her head and did not want to make any trouble.*

Without legislated security, tenants are still vulnerable to eviction. Alongside the concerns relevant to all tenants and residents what are particularly prevalent in the ILU and NFP retirement village sectors 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 current stock, the potential for upgrade, conversion/extension, the availability of capital finance are important issues to the future of this housing stock and its potential to provide housing for older people with low incomes and low assets".[26]

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

[26] McNelis, 2003, p16

*Case study – Insecurity :*

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

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

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

ILUs are ageing and 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 get into the front door.

*Case studies – Ageing and access:*

*One HAAG member lives in an ILU unit which is on the second level and is only accessible by a number of stairs. She broke her arm and during her recuperation she barely left her unit because she was unable to navigate the stairs properly without being able to hold on. If she had a bag or shopping there was no way she could ascend and descend the stairs with one arm out of action, which left her feeling very isolated.*

*One tenant from the Bayside units (described above) is in a wheelchair and the ILU provider allocated a supposedly 'disability friendly' unit for her to move into. The entry is flat but once inside the kitchen benches are all too high for her to utilise and there are too many high cupboards that she cannot reach. The only space that was appropriate for her wheelchair was the bathroom. The carpet in the unit makes it difficult for her to manoeuvre and she had a number of falls over the first 12 months of her tenancy.*

**Recommendations:**

42. **HAAG members believe 5 to 10 year leases for ILUs are reasonable, with a legislated option to renew which is decided by the tenant.**

43. **Standard written agreements would be beneficial.**

44. **Legislation must consider the security of an ILU tenant in the event of a sale, closure or redevelopment to ensure any current agreements are honoured and the tenant is not left homeless.**

45. **ILU providers should be responsible by law to provide relocation assistance to tenants should they plan a forced eviction due to sale, closure, demolition or re-development.**

46. **Recalling that organisations originally received government subsidies to provide housing for older people, both state and federal governments need to reconsider supporting these organisations to maintain and develop their current housing stock.**
47. **It should be mandatory for providers to provide accessible and adaptable housing based on the age-specific nature of the model, or alternatively to modify units and village environments on a needs basis.**

48. **HAAG members believe that the RTA must require that where an assessment made by a medical practitioner states there is a requirement for modification it must be addressed by the provider, and that a tenant/resident able to fund their own modifications must not be unreasonably refused.**

Rental affordability and protection is also important for ILU tenants in relation to security of tenure. ILUs are especially catered towards low income pensioners and therefore need to provide a lower than average rent to ensure tenants can sustain their tenancies.

In general rent in ILUs is provided at "below both housing stress and public housing rates"[27] but also sometimes provided at the same or similar levels to public housing. Unfortunately this is not legislated and therefore currently an ILU provider is not required to maintain those low levels of rent.

ILU rent could still be susceptible to market reviews which may make this unaffordable for older people on a fixed income, and therefore insecure.

[27] Bridge, 2011, p78

ILU rent levels are fairly low, often around or below 30% of income, although they are steadily increasing as are all living costs. HAAG is aware of some residents who pay $180 a fortnight in rent and it stretches up towards $350 a fortnight with varying levels in between, and beyond.

ILU tenants are eligible for rent assistance as well so based on $350 a fortnight in rent, for a single person in receipt of the full age pension (including rent assistance) they pay approximately 35% of income. 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 for 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 much more affordable and appropriate 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. Added elements will need to be included, that differ from a private rental arrangement, such as: communal maintenance and facilities and included utilities. With a clear explanation provided it makes it easier for tenants to know what they are entitled to receive and to request a reduction in rent if those services are not provided.

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 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.

**Recommendations:**

49. **HAAG members believe rent increases under the RTA should be formulated according to annual CPI increases, and according to 25% of income as per the pubic housing formula, to ensure this remains a financially viable option for pensioners and for providers.**

50. **The current 60 days notice period for an increase should be retained along with the prescribed form that operators must use.**

51. **Written agreements should outline clearly the purpose of the rent and the facilities and services provided.**

ILU tenants are generally the most 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. Once again this group would prefer having access to an ombudsman for support in conflict and disputes.

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 NFP organisation with any concerns or requests. This disconnect can make it difficult to have matters resolved promptly. Sometimes tenants will choose not contact management so as not to be seen as a burden.

*Case study – Kindness of neighbours:*

*One tenant in her 80's in a regional ILU required a fixture in her bathroom to be fixed but was not willing to contact management with her maintenance request. She put up with the issue for a while until another tenant found out and offered to make contact with management on her behalf, She accepted this and the matter was fixed fairly promptly but had it not been for her neighbour she would have put up with it rather than make a bother of herself.*

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. The RTA provides no clear guidelines about rights and responsibilities when it comes to communal areas and this oversight must be addressed.

**Recommendations:**

**52. A retirement housing ombudsman to be available for ILU tenants.**

**53. Legislate clear communication processes between tenants and management.**

**54. Ensure the RTA appropriately regulates the rights and responsibilities applicable to the communal areas of ILU living.**

**Not-For-Profit (NFP) retirement villages**

NFP retirement villages are covered by the *Retirement Villages Act 1986* (**RVA**). The Act has not been properly reviewed for over 10 years. It is vague and only provides very basic rights and responsibilities mostly in relation to fees and charges. The terms of day to day living within a village are usually contained within the contract although this is fraught with complexities. The Act is well overdue for a comprehensive review to ensure protections for residents are clear and well regulated.

There are no standard contracts in the retirement village sector and they can vary significantly from operator to operator and sometimes even within villages. This results in some residents having more rights outlined than others which cause confusion and complexity both for residents and for operators.

When trying to seek legal advice to better understand their contracts residents cannot find solicitors with expertise in the sector to assist them. NFP retirement village residents cannot generally afford solicitors anyway and there are no legal services available that can provide this type of assistance for free.

HAAG can assist people with understanding their rights and contracts very simplistically but as we are not a legal centre it does not constitute true legal advice. Although disclosure provisions in the Act state that prospective residents must receive fact sheets and other documents prior to the contract this does not always occur and puts people at a disadvantage when they are making a decision about their housing choice.

**Recommendations:**

**55. The *Retirement Villages Act 1986* must be comprehensively reviewed.**

**56. Standard contracts would be beneficial.**

**57. There needs to be a specially funded legal service to provide advice to residents of retirement villages.**

Security of tenure for residents in NFP retirement villages is much stronger than that provided by the RTA. There are limited termination provisions in the RVA but the processes surrounding termination are unclear and not legislated.

The RVA allows for terminations on the basis that if a resident can no longer live independently and 2 medical certificates can prove this they are given 14 days to vacate or if the resident has

breached a provision of the contract or the Act and failed to remedy that within 28 days a 60 day notice to vacate can be given.[28]

In the event of someone being unable to live independently the provision needs to be updated to require that an Aged Care Assessment Service (**ACAS**) must provide an assessment of the need for higher care. The 14 day timeframe for this provision is also unrealistic and may need to be amended to enable the resident to find appropriate care.

It is also unclear what must happen after a notice to vacate is served and the RVA does not explain what process must be followed. There must be an opportunity for a resident to challenge their termination and the Act needs to explain this clearly. Currently it is understood by HAAG that in order for an operator to seek a warrant of possession they must do so through the Supreme Court. This process must be clearly outlined because it currently causes great stress for residents.

*Case study – Retirement village eviction:*

*One resident was served a breach notice, followed by a notice to vacate, because it was believed he had spoken rudely to village staff. The resident wanted to leave the village anyway but finding alternative, affordable accommodation was going to take longer than the 60 days provided.*

*He was advised by HAAG that in order for the operator to seek possession of the unit they would have to go to the Supreme Court to do so and in the meant time he should sit tight and wait for alternative accommodation to become available. The resident was worried that the manager would come to his door on the termination date and force him out and it was explained that they cannot do that without a warrant.*

*It was also explained that termination cannot occur without the resident having an opportunity to argue his case but the stress of waiting for the day to arrive was taking its toll on the resident which it naturally would.*

*It must be said no action was taken by the operator and the termination date came and went. It appears it was a scare tactic to try and get the resident out without having to go through due process.*

**Recommendation:**

**58. Termination provisions need to be updated but kept limited, and the termination processes need to be clearly legislated and regulated.**

[28] *Retirement Villages Act 1986*, (Vic), section 16

NFP retirement village housing stock is older. This has resulted in units that do not enable easy access for older people as their needs change. Many NFP organisations over the years have struggled to maintain their stock and have eventually sold their properties, due to the well located and valuable land villages are built upon. Other organisations have decided to re-develop and build more expensive retirement housing or residential care facilities.

Sale and re-development has meant many residents have been forced to relocate when they thought they could live in their village home for life. The RVA does not mention relocation processes and procedures and what rights residents might have. Based on the limited termination provisions it is clear an operator cannot evict someone based on sale or re-development but the way these matters are handled mean residents will leave somewhat willingly and then the operator is seen not to be doing anything wrong technically.

*Case study – Losing our homes:*

*Currently 20 residents in a NFP retirement village have been told they have 12 months to find alternative accommodation because the site is going to be re-developed into a residential care facility.*

*HAAG was contacted by the organisation to request that we support the residents to find alternative housing, as were a couple of other services, which we are in the process of now doing.*

*Once again technically the residents do not have to move but they have been told that soon the site will be a construction site and it will become more difficult for people to live there. Already within a short space of time a couple of residents left fearful they would not be able to find anything and so accepting the first option they could find.*

*3 meetings have been held with residents so far. At the first meeting the news was given and surprisingly everyone remained calmwith no unrest or concern shown. Then progressively with each meeting residents have become more agitated and stressed concerned they will not find anything appropriate.*

*The impact this type of process has on people is momentous. Some residents have lived there over 20 years and are having to come to terms with losing their homes. Some have only been there for 3 to 6 months and are angry they were allowed to move in given the plans for re-development would have well been in place.*

*The impact of moving on an older person is significant. The stress of relocation can cause people to become physically and mentally unwell and can cause people to deteriorate fairly rapidly.*

**Recommendations:**

59. **Legislation must consider the security of a NFP retirement village resident in the event of a redevelopment to ensure any current agreements are honoured and the tenant is not left homeless.**

60. **NFP retirement village providers should be responsible by law to provide relocation assistance to tenants should they plan a forced eviction due to sale, closure, demolition or re-development.**

61. **A resident must not be forced to move until they have found something appropriate for their needs.**

Housing stock in the sector is ageing and accessibility and modifications can be an issue for some residents. Units were often built between the 1950's and the 1970's which means they are small and do not take into account changes in mobility needs.

During that time units were also built with the understanding that after a certain age many people would move into care or pass away so people were not ageing in place as much as they are now. This results in housing that does not meet the needs of the target group as they age.

**Recommendations:**

62. **Recalling that organisations originally received government subsidies to provide housing for older people, both state and federal governments need to reconsider supporting these organisations to maintain and develop their current housing stock.**

63. **It should be mandatory for providers to provide accessible and adaptable housing based on the age-specific nature of the model, or alternatively to modify units and village environments on a needs basis.**

64. **HAAG members believe that the RVA must require that where an assessment made by a medical practitioner states there is a requirement for modification it must be addressed by the provider, and that a tenant/resident able to fund their own modifications must not be unreasonably refused.**

Fees and charges in NFP retirement villages cause many people concern and confusion. There is always an ingoing contribution in the form of a lump sum payment, there are ongoing maintenance charges and there are exit fees usually known as Deferred Management Fees (**DMFs**). All of these charges are set by the operator at their discretion without clear regulation. The only guidelines in the Act in relation to charges define how fee increases should be calculated.

The most concerning fee is the DMF. This is often a percentage of the ingoing contribution paid to the operator upon exit. It can be anything from 10% to 100% which often results in a significant financial loss at the end of a residency in a village. This then impacts on future housing and care options.

Upon leaving a village a resident must also pay maintenance charges for 6 months or until the unit is re-leased whichever comes first. The refund applicable to the resident from their ingoing contribution (minus the DMF) is also generally paid out after 6 months – except where certain clauses are included in the contract as prescribed by the RVA. HAAG has observed that generally the full 6 months in charges is paid by the exiting resident.

There is also a rule in the RVA that states if a resident is entering care and is choosing to pay a bond, now called a Refundable Accommodation Deposit (**RAD**), then the operator must provide at least the interest on the RAD for 6 months until such time as the refund is due to be paid out. This is known as the aged care bond rule.

This rule is potentially in jeopardy as the industry is challenging it saying it is costing operators too much money and based on industry arguments, and changes in the aged care sector, the government is considering making amendments to it without properly reviewing the entire Act.

In June 2015 CAV asked for submissions responding to an unsubstantiated industry report and HAAG along with Consumer Action Law Centre (**CALC**), Council on the Ageing (**COTA**) and Residents of Retirement Villages Victoria (**RRVV**) were vehemently against making any changes until the entire Act was reviewed. Appendix F contains a copy of HAAG's submission.

Residents of NFP retirement villages are also eligible for rent assistance, as long as they pay under approximately $140,000 ingoing although many do not know this. Those who do not pay an ingoing contribution will pay higher fortnightly fees then those who pay a lump sum to enter into the village.

Although this form of housing is meant to be affordable for pensioners it can still create housing stress. Housing affordability stress is "when the household has an income level in the bottom 40 per cent of Australia's income distribution and is paying more than 30 per cent of its income in housing costs".[29] Housing costs include rent and other related bills and pensioners fall easily into this category.

[29] AHURI brief, 2016

*Case study – Higher fees:*

*One resident in a village could not afford to pay an ingoing contribution when she moved in so she is charged a rental charge and a maintenance charge. All residents pay the maintenance charge but the rental fee is additional for this person due to her inability to pay a lump sum upon entry.*

*She currently pays $769 a month which makes up approximately 40 to 50% of her income, including rent assistance and other supplements.*

**Recommendations:**

**65. Regulate DMFs in the RVA and place a legislated cap on the percentage charged by operators.**

**66. Provide a provision in the Act that an operator must have a duty to mitigate their losses when re-letting a unit so that an exiting resident is not necessarily disadvantaged by having to pay the full 6 months of maintenance charges.**

**67. Ensure the aged care bond rule remains intact, at least until such time as the whole RVA is reviewed and the rule can considered in a more holistic context.**

**68. Set rent and maintenance charges at levels that do not create housing affordability stress.**

Another matter of concern to a great many residents is the NFP status of this sector. Having NFP status means an operator can apply for exemptions from the RVA from the Director of CAV. HAAG has observed that all NFP retirement village operators have exemptions. Residents believe there should be no exemptions granted from the law and that in fact many NFP organisations earn a profit from their retirement villages.

An example of exemptions granted is contained in Appendix G.

Part of the issue is that profit from the villages is often placed into consolidated accounts that provide for other services of the same organisation, such as community and welfare services. Residents believe the funds should be put back into the villages rather than being used for other purposes.

**Recommendations:**

**69. NFP retirement village operators should not be exempt from the RVA.**

**70. Legislation should state that money earned by the operator from retirement village funds should be put back into the village towards capital works and maintenance.**

One area where the RVA is clearly lacking is in relation to repairs and maintenance, of units and communal areas and facilities. There is no mention of rights and responsibilities in relation to repairs and maintenance. Sometimes contracts will contain guidelines but due to the inconsistencies of contracts within the sector this is not guaranteed.

*Case study – Rising damp:*

*One resident contacted HAAG when she found one of her lounge room walls was peeling paint and appeared to be mouldy. She wrote to management, with photos attached, asking them to respond and they did inspect the unit. The resident was happy to keep going and said she would make contact again if nothing eventuated.*

*The resident re-contacted HAAG 6 months later because nothing had been resolved so we stepped in and began negotiating an outcome for the resident. Over the next 6 months we sought legal advice and Archicentre reports to convince the operator that the issue required a response. It turned out it was rising damp and the wall needed to be re-plastered, dried and re-painted which would take at least 4 weeks.*

*After continued negotiation the operator finally agreed to undertake the work, and provide and pay for alternative accommodation for the resident while the works were carried out. It took 12 months to achieve this outcome.*

**Recommendations:**

**71. The RVA should legislate clear provisions for repairs and maintenance and whose responsibility they are, both inside units and for communal areas and facilities. They must be undertaken within an appropriate timeframe and with the least amount of inconvenience to the resident.**

Older residents (and tenants) in Victoria need strong legal protections to live with security, stability and to enjoy a good quality of life in their housing of choice.

*"The importance of stable and secure accommodation for older people can make them exceptionally vulnerable to accommodation-related legal problems. Legal issues which may threaten the stability of accommodation arrangements may present a greater level of stress and anxiety to older people than other age groups."*[30]

[30] Ellison et al, 2004, p 149

HAAG members have often commented about their frustrations not knowing where to turn for legal information or how to solve a legal problem. HAAG members have tried many avenues to solve legal problems over the years. These include agencies and services such as: Community Legal Centre's (**CLC**'s), CAV, Member's of Parliament (**MP**'s), local council authorities and councillors, as well as tenant advocates.

HAAG is the only organisation to provide a free, specific retirement housing service in Victoria and approximately 25% of matters relate to retirement villages.

Unfortunately even with a seemingly extensive list of resources members express their frustrations about not feeling heard and the difficulty in finding someone who understands their issues. Members feel there is regulatory failure to address their issues, with a lack of enforceability, which impacts negatively on their housing situation.

The difficulties that arise about accessing these various avenues of legal advice, even for HAAG, is the lack of expertise and knowledge especially for residents in retirement villages.

*"Older people and service providers agreed that there was a gap in service provision to older people. Older people...do have some special needs that differentiate them from others. This is the case in terms of specialised areas of the law, such as retirement village contracts, and in terms of catering to their particular communication needs. The lack of a singular, specialised service for older people, or one-stop shop, sends them on a referral path".*[31]

There is evidence to show that resources currently available are lacking in updated and relevant information for residents and residents are mostly unaware of these resources anyway.

Everyday Law has a section about retirement villages which is completely lacking in sufficient and relevant information and only provides CAV as a source of information and advice. The Law Handbook has nothing on retirement villages and therefore does not provide older people with sufficient information and advice in relation to retirement housing.

Often residents feel fearful of exercising their rights. Even negotiations are stressful let alone having to consider taking formal legal action. HAAG members expressed being fearful of repercussions such as eviction or retaliation, feeling a lack of power, respect, unequal treatment and feeling like justice is one-sided.

*"Increased physical and emotional vulnerability, as people age and experience higher levels of dependency, can also have an impact on how they deal with perceived threats. Fear of what might happen to them can exacerbate the problem by isolating the older person from support networks and assistance".*[32]

[31] Ellison et al, 2004, p 53
[32] Ibid, p 31

Trust, time, involvement in decision making enables older people to feel more confident about taking action. The most important element for older people is support, to feel as though someone will stand by them and assist them through their issue. Older people also want services that are easy to access and engage with. Few organisations are able to take the time that older people need to work through a legal issue. Where some organisations are appropriate often resources, eligibility criteria and inability to provide outreach services can hinder access for older people.

Clear information about rights and responsibilities need to be provided to residents, which also requires accountability from managers and operators. They should be trained, accredited and held accountable for their practices. The government has an obligation to monitor this and act accordingly when not complied with.

There is an inherent power imbalance between residents and operators and issues arise often of mistreatment, bullying and taking advantage of people psychologically and financially. Issues with management are one of the most prevalent complaints brought to HAAG by residents.

The Victorian Civil and Administrative Tribunal (**VCAT**) is an option for residents and is supposed to be simple, low cost and provide for self-representation to encourage equal treatment within the justice system. Unfortunately residents feel it is complex, costly and inequitable which deters them from accessing it.

For this group of people VCAT is difficult, lengthy and inefficient due to the complexities in the legislative and regulatory framework. It is not addressing the needs of this more vulnerable group sufficiently.

Residents often resist taking matters to VCAT viewing it as too complex. As VCAT fees increase older people feel it is beyond their financial reach and many are unaware of the fee waiver. Information is not easily accessible about VCAT procedures and people often feel intimidated undertaking the process.

*"People need to be able to access the courts and legal processes or the law cannot enforce people's rights and responsibilities".*[33]

Alternative Dispute Resolution (**ADR**) processes are also available to residents but may not be appropriate where there is an imbalance of power between parties, or an unwillingness of parties to be constructive through and beyond the ADR process.

The majority of HAAG members who have used ADR processes feel they do not provide appropriate resolution due to the lack of enforceability of agreements. Generally HAAG members had poor experiences with processes such as negotiation, mediation and conciliation.

[33] Institute of Australia, Rule of Law

HAAG members overall feel they have lack of access to, and availability of, expert legal advice. They also express the complexities involved in exercising their rights and the difficulties in finding the correct service and support for their particular issues. Many HAAG members feel that services 'pass the buck' and no one is willing to take responsibility which means residents often decide not to access justice.

Residents have voiced they feel most comfortable accessing an ombudsman because it is non-confrontational, free, independent and expert. It allows for more timely resolution of disputes and assists to address the imbalance of power between the parties, as well providing regulatory

It must be noted though that an Ombudsman would not be effective until the RVA is reviewed to provide robust protections for residents. There needs to be rights to exercise for people to access justice. There can be no access to justice without strong legislation to support it.

*Case Study – Access to justice in a retirement village:*

*A not-for-profit retirement village resident contacted HAAG for assistance due to an increase in maintenance charges. The organisation managing the units had doubled this resident's charges.*

*This particular woman was single and had undergone surgery which required her to need some care and assistance in her recuperation. Her son came over from India to look after her while she healed. She informed the organisation that he would be staying with her for an extended period of time. As a result they decided she would need to pay double the charges during his stay.*

*According to the Retirement Villages Act 1986 (**RVA**) maintenance charges are not to be increased above the Consumer Price Index (**CPI**) unless in relation to specific increases in rates and wages.*

*When HAAG first spoke to this resident it was unclear what legislation was appropriate for this housing. The resident paid a 'donation' upon entry but was not provided with a receipt. HAAG approached the organisation to ask them what legislation governed the units and they did not know.*

*HAAG assessed it was a retirement village based on the donation model and wrote to the organisation stating they were not allowed to increase charges by more than CPI. They were also not allowed to charge extra for someone requiring a carer to stay with them.*

*Case Study – continued:*

*The organisation did not accept this and the resident decided she would like to challenge them further. As a result of her decision she was bullied by management and ostracised by other residents. A whole campaign was set against her due to her decision to challenge the organisation. While facing a complex justice system she also had to deal with a tense home environment which significantly impacted on her health over the 18 months this matter lasted.*

*In order to take the matter to VCAT it required an application under consumer law and within the civil claims list. As consumer law is not an area of HAAG's expertise we approached CALC for assistance. Unfortunately at the time CALC were not equipped to assist the resident although they did provide basic advice on the matter and support at a VCAT directions hearing to get the process moving.*

*HAAG then sought pro bono legal assistance for the resident through Justice Connect. After some advocacy by HAAG, due to delays in processing the application and the barrister not responding to correspondence, the resident was finally allocated a pro bono lawyer to assist with the matter. HAAG remained as a support even attending legal appointments with the resident.*

*Following this submissions were made by both parties, due to orders made at the directions hearing, but much of the statement made by the law firm assisting the resident signified they had a lack of understanding of the RVA, as well as the needs of the older resident. The law firm were often fairly negative about her chances at VCAT.*

*Following the submissions a compulsory conference was set. Prior to the conference taking place the managers of the retirement village agreed to reduce the residents charges and she would not have to pay for her son to stay.*

*This whole legal process took approximately 12 months, with 6 – 8 months being focused on the VCAT process.*

*Following this HAAG also contacted CAV about the status of the village. CAV eventually decided it was a retirement village. This occurred in 2011-2012 and to this day the village is seemingly still not complying with the RVA.*

*The case study above highlights all of the complexities in the justice system for retirement village residents. It is too lengthy and too difficult especially when the matter requires a quicker response.*

**Recommendations:**

72. **Clear up front disclosure about the rights and responsibilities of residents and operators is required for prospective residents, with penalties for operators that do not comply.**

73. **There should be legislated industry standards to ensure operators and managers are appropriately trained to manage a retirement village and to interact with older people.**

74. **Consumer Affairs Victoria should have a more active and visible enforcement and regulatory role to ensure operators and managers comply with their obligations under the law.**

75. **HAAG members wholeheartedly believe there is a need for a retirement housing ombudsman that would provide free, fair and effective dispute resolution services to older residents of all retirement housing types. HAAG has been working collaboratively with CALC, Council On The Ageing (COTA) and Residents of Retirement Villages Victoria (RRVV) to encourage government to adopt this approach.**

76. **HAAG believes that VCAT should have a retirement villages list, separate to the civil claims list, to ensure a more efficient avenue to take legal action should it be required.**

77. **Government should fund a service to provide free legal advice and support specifically for retirement village residents.**

**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".[34]

Rental village tenants tend to be aged within their 80s and 90s due to the appeal of a balance between assisted living with support services, as well as independence. "The provision of meals and heavy laundry and the lack of maintenance were highly valued",[35] as were safety, security and control.

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

*Case study – Fear and complexity:*

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

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

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

Unfortunately the RTA does not provide legislated security of tenure for rental villages. There is no minimum lease term and there is still opportunity for operators to use the 'no specified reason' notice to vacate.

Residents 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.

[34] Jones, 2007, p47
[35] Ibid, p58

**Recommendations:**

**78. Similar to ILUs, due to the age-specific model legislation should ensure security of tenure is provided. Most tenants view rental villages as their "final home"[36] and the legislation should reflect this intention.**

**79. Minimum 10 years leases should be provided and the 'no specified reason' notice to vacate should be removed.**

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.

*Case study – Relocating at 99:*

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

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

**Recommendation:**

**80. There should be requirements in legislation for the operator to relocate the residents in the event of a sale, or for the new owner to be bound by the conditions of the previous owner's agreements.**

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

[36] Jones, 2007, p58

Research conducted by AHURI found that "affordability was a concern for those who did not have additional income or assets on top of the age pension".[37] After other out-of pocket expenses "residents talked about cutting back on the costs of entertainment, social activities, medicines and shampoo and of not being able to afford to run a car".[38]

One tenant stated, "The rents are excessive. You need enough left for electricity, phone, doctors".[39] Another said, "I've been in the position where I couldn't afford to have a prescription made up".[40]

Currently tenants must continue paying for services (such as 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.

Currently the Act does not regulate the services provided in rental villages but it does regulate rent. The Act should regulate the services provided as well, to ensure they reflect the level of service provision being delivered and to provide access to justice should services not meet the expected standards.

Many residents 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. Therefore services should only be paid for if the resident chooses to receive them.

Although services rendered is a consumer matter if an older tenant wanted to pursue a course of action to challenge service provision they would have to understand consumer law and make an application under the civil claims list. 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.

**Recommendations:**

**81. Given the age specific nature of this housing rent should be set at a lower percentage with rent increases calculated according to CPI and given annually with the retained 60 day notice period and prescribed form.**

**82. Other services, such as the provision of meals and linen service, should be set as separate costs and should only be payable if utilised therefore providing tenants with choice.**

[37] Bridge, 2011, p79
[38] Jones, 2007, p59
[39] Ibid, p59
[40] Ibid, p59

**83. A written tenancy agreement should always be provided to tenants and must include a clear explanation of what rent covers and what service costs covers. In the event of a tenant requesting a rent assessment or seeking a reduction in their rent this would make the process much easier.**

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

*Case study – False arrears:*

*One tenant received a letter stating she was over $900 in rent arrears and the village was demanding that she pay it straight away otherwise she would be evicted. HAAG looked into the matter further and found it was due to a rent increase that had occurred a number of months earlier. The tenant had not altered her Centrelink payments to reflect the increase and the manager had failed to address the matter when it first occurred.*

*On further investigation HAAG found no valid rent increase notice had been provided and contacted the operator to tell them the tenant owed no rent as there was no valid rent increase. It came to light that many of the tenants in the village were in arrears, for a variety of reasons, and HAAG was unable to find out how many may have paid arrears they did not owe because of an invalid rent increase.*

Also 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. Some villages began as purely rental arrangements, often with investors that owned the units and rented them out to pensioners. Slowly through older people began to buy units to live in themselves thereby changing the legislative framework the village was bound by which has sometimes made it harder for residents to understand their rights.

*Case study – Complex arrangements:*

*HAAG attended a residents meeting at one rental village to speak to residents about their rights and after discussing the issues for a while it was evident there were a couple of different arrangements in the village.*

*Some residents were owner occupiers, so they owned their units and resided in them. Others were tenants. The rights applicable to both groups are different and it made the situation much more complex.*

Units are fairly well designed to accommodate older people with walkers and scooters, albeit they are small, but external village environments are often not designed appropriately. Winding paths and steep inclines 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 – No scooter access:*

*At one rental village a man in his 90's lived at the back of the village. He could not come through the village on his scooter because the pathways and ramps that led to his unit were too narrow and the turns were too sharp which meant he could not manoeuvre his way through. This meant he had to leave his scooter out the front of the village, where it was not secure, and had to walk through to his unit which was a struggle for him.*

*At another rental village the village was built on a hill and during a visit one day as I walked up the main path I encountered a resident on a walker heading to collect her mail. The mail boxes were located at the bottom of the hill at the front of the village and I commented to her how steep the incline was. She said it was difficult on some days but at least it provided her with some exercise.*

**Recommendations:**

**84. Rental village operators must be bounds by all parts of the RTA and penalties should apply if they are found not to comply.**

**85. Clear disclosure provisions should be included in the Act to ensure residents understand what their rights and responsibilities are, as well as those of management.**

**86. Modification provisions should also apply to this form of housing, as outlined above in relation to ILUs and NFP retirement villages.**

**Conclusion**

The retirement housing sector is complex and varied. There are a number of housing types with varying levels of regulation and protection for residents but there are also limited options for varying income levels, and trying to encapsulate everything in this submission is a feat.

The regulatory framework presiding over retirement housing is intricate and requires a fairly high level of expertise and knowledge to be able to navigate. Assessing what type of housing someone lives in takes time to master and even HAAG with years of experience cannot possibly know every detail of every form of housing.

Industry and residents are constantly changing and legislation and regulation must keep up to date. The inherent power imbalance evident in every form of retirement housing needs to be addressed adequately to ensure residents are not disadvantaged.

Older people become naturally more vulnerable as they age, whether physically or mentally, and their ability to adapt to change and move from place to place becomes more limited. The impacts of change and transition can be significant and result in deterioration of health and wellbeing.

Older people view security is a key need in their later years and from this foundation they are better able to have quality of life. A feeling of security encourages people to exercise their rights and accessible and adaptable housing, which is sustainably affordable, can enable people to age in place.

In line with HAAG's manifesto[41] the key aspects of importance in retirement housing for HAAG members, tenants and residents are:

- Security,
- Affordability,
- Availability,
- Accessibility, and;
- Appropriate housing standards.

These along with being treated with respect and being of value are the benchmarks that older people seek in their housing. It is so simple and so feasible to achieve and we hope the inquiry will support our endeavours.

[41] HAAG manifesto

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