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Legislative Council

Legal and Social Issues Committee

Inquiry into the retirement housing sector

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Legal and Social Issues Committee

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Committee functions

The Legal and Social Issues Committee (Legislation and References) is established under the Legislative Council Standing Orders Chapter 23 – Council Committees, and Sessional Orders.

The committee's functions are to inquire into and report on any proposal, matter or thing concerned with community services, gaming, health, law and justice, and the coordination of government.

The Legal and Social Issues Committee (References) may inquire into, hold public hearings, consider and report on other matters that are relevant to its functions.

The Legal and Social Issues Committee (Legislation) may inquire into, hold public hearings, consider and report on any Bills or draft Bills referred by the Legislative Council, annual reports, estimates of expenditure or other documents laid before the Legislative Council in accordance with an Act, provided these are relevant to its functions.

Government Departments allocated for oversight:

- Department of Health and Human Services
- Department of Justice and Regulation
- Department of Premier and Cabinet

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This report is available on the Committee's website.

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Terms of reference

Inquiry into the retirement housing sector

On 24 February 2016, the Legislative Council agreed to the following motion:

That, pursuant to Sessional Order 6, this House requires the Legal and Social Issues Committee to inquire into, consider and report, no later than 1 March 2017, on the operation and regulation of the retirement housing sector (including retirement villages, caravan parks, residential parks and independent living units) with the aim of identifying opportunities for improvement and reform and, in particular, the Committee should consider —

1. existing legislation that relates to retirement housing, in particular recommendations for reform of retirement housing legislation to ensure it reflects the diversity of retirement housing types;
 - a. includes proper consumer protections, dispute resolution procedures, fair pricing, and consistent, simplified management standards and regulations across the sector; and
 - b. has a focus on dignity, respect, appropriate care and quality of life for retirees;
 - c. comparable reviews and recommendations for reform in other Australian and overseas jurisdictions;
2. the experiences and views of residents of retirement housing and their families and retirement housing owners and managers;
3. the option to appoint a Retirement Housing Ombudsman; and
4. the impact of local government rating on retirement housing.

Chair's foreword

Victoria's population is ageing and causing significant growth in demand for retirement housing. At the same time, residents have heightened expectations about the services that will be delivered.

This creates a range of challenges for government and industry, and also prompted significant public interest in this Inquiry. It's important for the Victorian Government to ensure that legislation keeps pace with change, and in a way that protects consumers and provides the sector with the certainty it needs to grow.

A variety of issues and problems were raised in evidence or through submissions. Contracts are complicated and are not always well understood by all parties. Reliable legal access may be hard to access. There are significant cost of living pressures for those on fixed incomes. Relationships between residents and management are sometimes fractious and existing options to resolve disputes are poorly regarded by many residents.

The Committee was not tasked with solving every problem identified by those who contributed to the Inquiry. It was not charged with undertaking a wholesale review of the various pieces of legislation that are relevant to retirement housing in Victoria.

The Committee has identified several opportunities for improvement and has made recommendations accordingly.

The current supply of retirement housing is failing to keep pace with growth in demand, and without supply side changes, this gap will increase. The Committee recommends the Planning Minister examine ways to address this supply shortage, possibly through establishing Retirement Housing Zones.

While the Committee received evidence that most residents are happy in their retirement community, it's clear that dispute resolution processes need to improve, as does training for those who work in and provide advice to the industry.

The Committee recommends the Law Institute of Victoria support better training for the legal profession, and also recommends that training for village managers be expanded. In addition, the Committee recommends the establishment of a low cost, accessible and binding dispute resolution process, either by expanding the jurisdiction of an existing Ombudsman, or through the creation of a new Ombudsman.

The Committee received many submissions about the issue of differential rates. The case for a rates discount for residents of retirement villages is appealing, as so many services are provided by the village and not the local council, but such a recommendation was not made. As the MAV told us, rates are not levied on a fee

for service model, and in the current rate capping environment imposed by the State Government, any reduction in revenue from one source would merely cost shift to other ratepayers.

Victorians deserve to feel confident that should they choose to move into a retirement village or park, they will find a suitable home where they will feel safe and enjoy their retirement years, and where this does not occur, there are processes in place to address these concerns. The recommendations we have made are aimed at improvements to provide that confidence.

The Committee is grateful to everyone who made submissions to this Inquiry and took the time to speak with us at our public hearings. The combination of professional expertise and personal experience was invaluable in helping us understand the key issues in this area. The Committee also thanks the Secretariat for their hard work in this Inquiry: Mr Patrick O'Brien, Secretary; Mr Matt Newington, Inquiry Officer; Ms Michelle Kurrle and Mr Anthony Walsh, Research Assistants; and Ms Prue Purdey, the Committee's Administrative Officer.

I thank Mr Edward O'Donohue, who was Chair of the Committee for the majority of this Inquiry, and my parliamentary colleagues on the Committee for the way they have worked together to produce this report.

I commend the Report to the House.

Margaret Fitzherbert MLC
Chair

Acronyms

CAV	Consumer Affairs Victoria
CPI	Consumer price index
DAP	Daily Accommodation Payment
DMF	Deferred management fee
ILUs	Independent living units
LIV	Law Institute of Victoria
MAV	Municipal Association of Victoria
RAD	Refundable Accommodation Deposit
RHAAP	Retirement Housing Assistance and Advocacy Program
VCAT	Victorian Civil and Administrative Tribunal

Executive summary

Chapter 1

The first three chapters of the *Inquiry into the retirement housing sector* include background information needed to understand the key issues discussed in the Report. Chapter 1 provides an overview of the Inquiry methodology and introduces the main topics the Committee focused on throughout the Inquiry.

The Legal and Social Issues Committee received the Inquiry Terms of Reference from the Legislative Council on 30 May 2015. The Report is a culmination of the Committee's extensive research and consultation process. During the Inquiry the Committee received 766 submissions, heard from 90 witnesses at seven public hearings and travelled to Adelaide for a one-day study trip.

The Report focuses on the following retirement housing models:

- For-profit retirement villages
- Not-for-profit retirement villages
- Mobile home communities (including residential parks, caravan parks and manufactured home villages)
- Independent Living Units (ILUs)
- Rental villages.

Chapter 1 includes demographic trends and introduces common concerns presented to the Committee regarding these models. The vast majority of evidence received by the Committee related to retirement villages. This is reflected throughout the Report.

Chapter 2

Chapter 2 focuses on the factors that influence retirement housing supply and demand.

Demand for retirement housing is growing. The key factors influencing this demand are: an ageing population including the baby boomers; the changing expectations of older people; and social concepts such as ageing in place and downsizing.

Demand for retirement housing is driven by more than demographics and social change. The attractiveness of the sector to retirees is another important contributor. The Committee received evidence on the main reasons people choose to move into a retirement village. These include: enjoying social support and social activities; making new friends; and a reassuring sense of security.

The Committee heard that the supply of retirement housing in Victoria is not keeping up with demand. The main supply challenges the sector faces are affordable access to appropriate land and zoning and planning issues.

Chapter 3

Chapter 3 examines retirement housing legislation and introduces related issues addressed in detail throughout the remainder of the Report.

In Victoria, the three major pieces of legislation that cover the different forms of retirement housing are:

- *Retirement Villages Act 1986*
- *Residential Tenancies Act 1997*
- *Owners Corporations Act 2006*.

The two Acts most frequently raised with the Committee during the Inquiry were the *Retirement Villages Act 1986* and the *Residential Tenancies Act 1997*. The *Retirement Villages Act 1986* covers both for-profit and not-for-profit retirement villages in Victoria. The *Residential Tenancies Act 1997* covers the following housing types relevant to this Inquiry: caravan and residential parks; independent living units; and rental villages.

The Committee heard that retirement housing legislation is complex and sometimes overlaps. This was said to reflect the wide variety of retirement housing options available to retirees. However, this complexity can create confusion and make it difficult for consumers to understand and exercise their legal rights.

Chapter 4

Retirees entering a form of retirement housing are usually required to sign a contract. These documents can be long – sometimes over 100 pages – and technical, making rights and obligations even more difficult to understand.

Changes to the *Retirement Villages Act 1986* that came into effect in 2014 require information to be provided to residents via factsheets and pre-contract disclosure statements were a significant step forward in easing this complexity.

Despite the changes that occurred in 2014, understanding the full legal and financial implications of buying into a retirement village remains challenging. The Committee heard that the majority of retirees obtain legal advice before signing a contract. However, legal advice is not always easily accessed. Further, even when obtained, evidence suggests that many practitioners do not specialise in retirement housing legislation or how to provide adequate advice on contracts.

Two other concerns addressed in Chapter 4 are: a trend away from strata titles to loan-lease titles in retirement villages; and a lack of understanding of the retirement village model among retirees' families.

Chapter 5

Buying a ‘right to reside’ in a retirement village, as opposed to a freehold land acquisition, is different to a ‘normal’ property purchase because of the costs involved and the security of tenure. The costs fall into three groups: ingoing; ongoing; and outgoing.

Residents make an up-front payment when they enter a retirement village. This payment may be described in the retirement village contract in a number of different ways (ingoing contribution, an interest-free loan, a refundable deposit or the purchase price).

Ongoing costs at a retirement village include: maintenance charges; special levies; personal services fees; and metered services and insurance costs. Strata title owners must pay maintenance charges and owners corporation fees when departing a village until the retirement village unit is sold. Non-strata title owners are required to pay maintenance charges only up to six months after leaving the retirement village.

Outgoing costs are commonly known as deferred management fees or DMFs. The Committee heard that these are the most controversial and misunderstood component of the retirement village model. DMFs are calculated as a percentage per year of either the exiting resident’s ingoing contribution or purchase price or the new resident’s ingoing contribution or purchase price. Retirement village representatives told the Committee that DMFs serve two purposes: they lower the cost of entry for residents (although this point was contested); and they help fund services provided by villages.

An ongoing source of contention between retirement village residents and operators is the difference between the terms ‘reinstatement’ and ‘refurbishment’. ‘Reinstatement’ refers to the repairs necessary to bring a village unit to the same condition as when the resident moved in; ‘refurbishment’ refers to works that improve the unit beyond that level. Before signing a contract, residents should be clear about what is required on departing the village.

The issue of differential local government rates for retirement villages featured strongly in this Inquiry. Those in favour of differential rates argue that residents already pay monthly village fees for services that councils charge for, such as rubbish collection, street lighting and road maintenance. The counter argument is that council rates are not levied on a user pays basis with the costs generally spread across all land owners.

Chapter 5 finishes with an examination of the Aged Care Rule in Victoria, which requires retirement villages to pay the entry fees of residents entering aged care. The sector believes that having to pay the refundable accommodation deposit (RAD) has the potential to cause cash flow problems, especially for smaller operators. It was argued that village operators should have the option of paying the daily accommodation payment (DAP) instead.

Chapter 6

Chapter 6 examines evidence about management standards in the retirement housing sector and related issues such as a perceived power imbalance in favour of management and security of tenure. While there are few formal prerequisites to be employed in the sector, some of the skills retirement housing managers must acquire include: financial and legal expertise; working with a wide variety of people; and the ability to respond to complaints about building or service standards. It is because of the challenging nature of the work that stakeholders argued that retirement village managers need professional training.

Some retirement village residents told the Committee that they believe a power imbalance exists in favour of village owners, mainly because some residents may not have the financial freedom to move if they have a dispute with their village.

The Lifemark Village Scheme is one form of accreditation available to the retirement village sector. This is an independent accreditation system that provides quality assurance standards for operators. Some operators also have their own internal employee professional development programs.

Another professional development option for retirement villages is the Property Council of Australia's Village Manager Diploma. The course, delivered via the Property Council of Australia's professional development academy, is designed to help managers improve the service they offer residents and comply with legislation across Australia.

One issue raised in this Inquiry in relation to caravan and residential parks was security of tenure. Park contracts are more flexible than other forms of housing and parks generally provide more affordable and short-term accommodation. However, this flexibility can create a sense of insecurity for some residents.

Caravan and residential parks fall under the *Residential Tenancies Act 1997*. The Act lists a number of reasons that a notice to vacate can be issued, such as bad behaviour or destruction of property. The Act also allows for eviction for no specified reason, which the Committee heard facilitates the sector providing accommodation to 'high risk' people. The sector believes that on the whole it does not abuse this power and that no specified reason evictions are used as a last resort only.

Chapter 7

Chapter 7 addresses the retirement housing dispute resolution model in Victoria.

A retirement village resident who has a dispute with their village owners should initially use the village's internal dispute resolution process (which all villages must have). If the dispute cannot be resolved to the resident's satisfaction, it can then be taken to Consumer Affairs Victoria (CAV) and the Victorian Civil and Administrative Tribunal (VCAT).

Evidence supports the argument that the retirement housing sector is generally well regarded by residents. The Committee heard that the legislative changes that came into effect in 2014 improved the sector and helped raise resident satisfaction levels. Disputes in retirement villages mostly fall into two main groups: repairs and maintenance issues; and charges and ongoing fees. Retirement villages also face the challenge of building housing that can adapt to residents' changing needs as they age.

In caravan and residential parks, the standard of 'moveable' or 'relocatable' homes may be a concern. Although relocatable homes do not require a building permit, since 2011 they have had to meet Building Code of Australia standards. It was suggested that the majority of concerns surrounding the quality of these homes relate to housing that pre-dates this requirement.

Stakeholders expressed their dissatisfaction to the Committee at CAV's limited powers and the fact that its decisions are not binding. For many this makes the model ineffective. Stakeholders also considered the VCAT dispute resolution process to be expensive and time consuming.

Discussion on a new dispute resolution model dominated much of this Inquiry. Debate centred on the benefits or otherwise of creating a Retirement Housing Ombudsman or an Advocate. Given the breadth of evidence received, the Committee has recommended the introduction of a new alternative for low cost, timely and binding resolution of disputes in the retirement housing sector.

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1.1 Introduction

In Australia, the term ‘retirement housing’ covers a range of housing options for older people who live independently. It can alternately be referred to as ‘housing for the elderly’ or ‘seniors’ housing’, however this Report uses the term ‘retirement housing’ throughout.

Residential care facilities, such as aged care facilities, nursing homes and hostels, are mostly covered under the Commonwealth *Aged Care Act 1997* and provide a high level of care for individuals who can no longer live independently. However, some retirement villages offer low-level and / or high-level nursing home or aged care facilities, which may be located on the same site as the retirement village.

Different retirement housing models have evolved in different legislative, cultural and commercial environments to cater for different demographics. These demographics are constantly changing and will present different challenges to the sector in the future.

1.2 Evidence received and Inquiry scope

The majority of evidence received by the Committee, through submissions and public hearings, came from residents and residents’ associations, operators, and consumer advocacy organisations. The Committee received 766 submissions, heard from 90 witnesses at seven public hearings and travelled to Adelaide for a one-day study trip.

Retirement villages featured prominently in this evidence, however the Committee also received evidence about caravan and residential parks, independent living units, and rental villages.

This Report focuses on the following retirement housing models:

- For-profit retirement villages
- Not-for-profit retirement villages
- Mobile home communities (including residential parks, caravan parks and manufactured home villages)
- Independent living units (ILUs)
- Rental villages.

A number of other housing options fall outside the scope of the Terms of Reference for this Inquiry, including:

- Residential aged care facilities / services / nursing homes / aged care homes

- Remaining in the family home (and the various care packages and equity release schemes existing or recommended to facilitate this)
- Home ownership
- Private rental market
- Age-specific boarding houses / rooming houses / private hotels
- Serviced apartments
- Supported residential services
- Social housing
- Community housing.

1.3 Forms of retirement housing

Retirement housing in Victoria includes a range of options, with facilities and funding arrangements varying according to the residents' needs.¹ Defining characteristics include elements such as:

- Design: accessibility and useability for older people (including those with a range of disabilities)
- Social support: independent or communal living
- Affordability: affordable to pensioners or self-funded retirees
- Management model: profit or not-for-profit
- Access to care: co-located with residential aged care facilities or reliant on home aged care or community aged care services
- Entry restrictions: minimum age of entry requirements.

In its submission to this Inquiry, the Australian Association of Gerontology notes the importance of providing a variety of options that accommodate retirees' needs and maintaining their ability to choose where they live. It states:

A diversity of retirement housing options is required, so that older people can make a decision that is right for them about where they live, what type of home they live in, whether they buy or rent, the support services they need, and the community setting that enables them to stay as active and autonomous as possible.²

The different retirement housing options available in Victoria have evolved over time according to government support, market demand and the influence of international models.³ This was particularly notable in the 1980s when a major expansion of home and community care services lead to an increase in housing options for older people.⁴

1 Housing for the Aged Action Group Inc, *Submission*, p. 3; Australian Housing and Urban Research Institute, *Submission*, p. 14.

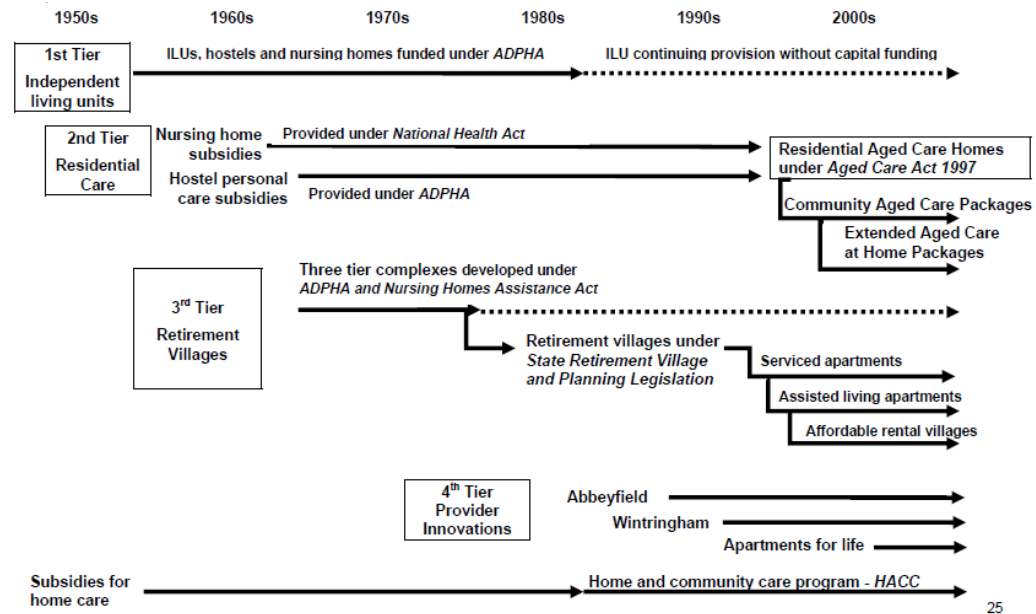
2 Australian Association of Gerontology, *Submission*, p. 5.

3 Australian Housing and Urban Research Institute, *Submission*, p. 17.

4 Ibid.

Figure 1.1 details the history of retirement housing available in Australia, including the development of different types over time.

Figure 1.1 History of housing types



Source: Australian Housing and Urban Research Institute, *Submission*, p. 17.

The Australian Housing and Urban Research Institute's submission to this Inquiry includes tables detailing the range of housing options available to older people in the service integrated and rental markets (including Australian and international examples). These tables have been adapted and reproduced in this Report as Appendix 1 (see also Appendix 2 – Where older Australians live).

The different forms of retirement housing have arisen from different historical, commercial and policy contexts. As a result, they cater to different demographics, are diverging from one another and will face different concerns in the future. These topics are briefly considered here in relation to each main retirement housing model considered by the Committee. Key concerns identified are addressed throughout this Report.

1.3.1 Retirement villages

Retirement villages are the most recognisable form of retirement housing. They make up a significant portion of the retirement housing market, with figures varying between 40–64 per cent of the total market.⁵ Villages can be operated by not-for-profit and commercial businesses.⁶ Their target demographic has

⁵ Housing for the Aged Action Group Inc, *Submission*, p. 77.

⁶ Aged and Community Services Australia, *Submission*, p. 11.

traditionally been older people capable of living independently,⁷ usually after selling their home. However, more affordable retirement village models have begun to cater to low-income or low-asset older people.⁸

In Victoria, the *Retirement Villages Act 1986* defines a retirement village as a community where:

- The majority of residents are retired persons and are provided with accommodation and services other than services that are provided in a residential care facility; and
- At least one of the residents, before or upon becoming a member of the community, pays or is required to pay an ingoing contribution that is not rent.⁹

In practice, what a retirement village looks like in Victoria varies and can include: large properties containing 1–3 bedroom units; medium-density low-rise townhouses; and high-density apartments.¹⁰ As discussed previously, some retirement villages offer low-level and / or high-level nursing home or aged care facilities, which may be located on the same site as the retirement village.

Housing for the Aged Action Group describes the standard retirement village model thus:

Generally, these villages comprise large clusters of units – 1, 2 and 3 bedroom – in a gated environment with a number of communal facilities and spaces. Ingoing contributions generally start from \$200 000 and will depend on the location, services provided and units developed. Ongoing fees and exit fees are also paid. The most common exit fee is the deferred management fee (DMF) ...¹¹

[The model's main appeal is] the combination of independent living and on-site recreational and passive support services.¹²

The Committee heard evidence from operators that the retirement village industry is very competitive and increasingly dominated by large corporate and not-for-profit operators.¹³

Demographics

According to Residents of Retirement Villages Victoria, retirement villages house more than 45 000 Victorians aged over 55 in 33 000 residences across 317 for-profit and 119 not-for-profit retirement villages. One challenge for village operators is that the industry now provides accommodation to five generations, meaning the age range of residents may be 40 years or greater.¹⁴

7 Residents of Retirement Villages Victoria Inc, *Submission*, pp. 38-39.

8 Australian Housing and Urban Research Institute, *Submission*, p. 20.

9 *Retirement Villages Act 1986*.

10 Property Council of Australia, *Submission*, p. 3.

11 Housing for the Aged Action Group Inc, *Submission*, p. 77. See Chapter 5 for a discussion on DMFs.

12 *Ibid.* p. 75.

13 For example, see: Andrew Philip - Retirement Communities Australia, *Transcript - 12 October 2016*, p. 2 and Stewart Gull - Country Club Villages, *Transcript - 19 October 2016*.

14 Residents of Retirement Villages Victoria Inc, *Submission*, p. 6.

Table 1.1 details these generations and their current age ranges (national figures).

Table 1.1 Retirement village generations in Victoria

Generation	Born	Coming of age	Age in 2016
The Depression Era	1912-1921	1930-1939	95 to 104
World War II	1922-1927	1940-1945	89 to 94
Post-War	1928-1945	1946-1963	71 to 90
Baby Boomers I	1946-1954	1963-1972	62 to 70
Baby Boomers II	1955-1965	1973-1983	51 to 61

Source: Residents of Retirement Villages Victoria Inc, *Submission*, p. 6.

According to research conducted by key stakeholder bodies and presented to the Committee 90 per cent of all retirement village residents are aged 70 years and over, with more than 50 per cent aged 80 or more years. Although the qualifying age for entry into a retirement village is 55, the average age of a resident on entry is 73–75 years and the average resident age is 79–80 years.¹⁵

Table 1.2 is adapted from Residents of Retirement Villages Victoria's submission to this Inquiry and shows a breakdown of the age range of residents in retirement villages in Victoria.

Table 1.2 Age of retirement village residents in Victoria

Age range, years	Percentage of residents
50–59	0.7%
60–69	9.6%
70–79	37.8%
80+	51.9%

Source: Residents of Retirement Villages Victoria Inc, *Submission*, p. 6.

Key concerns

The main concerns heard by the Committee regarding retirement villages were the following:

- Not-for-profit housing stock is older and the quality is declining¹⁶
- Rising land value has increased redevelopment of existing villages, either forcing residents to move, or the nature of the housing provided is changed often to a more expensive model¹⁷

¹⁵ Aged and Community Services Australia, *Submission*, p. 11; Property Council of Australia, *Submission*, p. 16.

¹⁶ Housing for the Aged Action Group Inc, *Submission*, p. 53.

¹⁷ Ibid.

- Significant variation between services offered by villages, especially between not-for-profit and commercial villages¹⁸
- Contracts which detail the rights and obligations of residents and managers are complex and difficult for older people to understand¹⁹
- Legal advice is problematic due to a lack of affordable expertise²⁰
- The *Retirement Villages Act 1986* is open to interpretation.²¹

1.3.2 Caravan and residential parks

Caravan parks traditionally provide holiday accommodation and, to a lesser extent, permanent residency, although the industry is now providing increasing numbers of sites for permanent residents.²² Housing for the Aged Action Group notes in its submission that caravan parks have historically catered to people on lower incomes, but their ability to do so is being challenged by rapid increases in land values, tempting caravan park owners to sell their parks to developers.²³

Residential parks are purpose built sites that allow people to own their ‘moveable’ or ‘relocatable’ dwelling and lease the site on which it stands (known as ‘owner/renters’),²⁴ although some residents rent both.²⁵ The residential park model arose in Victoria in the late 1990s / early 2000s and has progressed quickly since in response to the need for more affordable housing options for older people.²⁶

Entry fees and rental costs vary across the parks industry. Most operators charge entry fees up to \$300 000²⁷ for a moveable dwelling or up to \$500 000 for a fixed unit.²⁸ Ongoing rental fees average around 15 to 20 per cent of the pension.²⁹ Housing for the Aged Action Group notes that some operators also charge exit fees.³⁰ Parks provide basic facilities and amenities for relocatable homes, the quality and level of which vary significantly between operators.³¹

18 Residents of Retirement Villages Victoria Inc, *Submission*, p. 39; Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*, p. 57.

19 Housing for the Aged Action Group Inc, *Submission*.

20 Ibid.

21 Ibid.

22 Victorian Caravan Parks Association, *Submission*, p. 3.

23 Housing for the Aged Action Group Inc, *Submission*, p. 15.

24 Peninsula Advisory Committee for Elders, *Submission*, p. 1; Housing for the Aged Action Group Inc, *Submission*, p. 25.

25 Housing for the Aged Action Group Inc, *Submission*, p. 81, 83; Australian Housing and Urban Research Institute, *Submission*, p. 23; Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*, p. 58.

26 Housing for the Aged Action Group Inc, *Submission*, p. 76, 83-84; Peninsula Advisory Committee for Elders, *Submission*, p. 1; Australian Housing and Urban Research Institute, *Submission*, p. 24; Rosalyn Franklin - Mornington Peninsula Shire Council, *Transcript - 5 October 2016*, p. 39.

27 Housing for the Aged Action Group Inc, *Submission*, p. 15.

28 Ibid. p. 83; Victorian Caravan Parks Association, *Submission*, p. 5.

29 Victorian Caravan Parks Association, *Submission*, p. 5; Housing for the Aged Action Group Inc, *Submission*, p. 83.

30 Ibid.

31 Australian Housing and Urban Research Institute, *Submission*, p. 24.

Caravan and residential park residents are covered by either Part 4 or Part 4A of the *Residential Tenancies Act 1997*:

- Part 4 covers residents who lease their dwelling from the park owner (typically more traditional, older dwellings)
- Part 4A covers purpose built villages of moveable dwellings and residents who own their own caravan or dwelling and enter into a site agreement with the park to rent the site on which their home is located and which covers all their land-based costs as well as the maintenance of any communal facilities.³²

Table 1.3, below, adapted from the Victorian Caravan Parks Association's submission to this Inquiry, details types of caravan parks and where they fit within the Act.

Table 1.3 Types of caravan parks operating in Victoria

Description	Customer base	Comments
Part 4A residential park	Solely for Part 4A site tenants who own their own dwelling and enter into a site agreement to rent the site on which their home is occupied.	This is a growing segment of the market, where affordable housing is provided in a gated community, with shared facilities for use by the homeowners.
'Hybrid' caravan park – both Part 4A and Part 4	Mixed customer base comprising: <ul style="list-style-type: none"> • Tourists on short-stay visits • Part 4 residents who rent their dwelling from the park owner • Part 4A residents. 	There is an emerging trend where hybrid parks are starting to regenerate, through improving the quality of the homes in the parks as well as improving their facilities.
Tourist parks	A park that is purely focused on providing accommodation for tourists in either the park's own cabins or on caravan or camping sites.	Many of these parks have less than 100 sites and purely rely on the tourist market.

Source: Victorian Caravan Parks Association, *Submission*, p. 3

Demographics

The total number of people who live permanently in caravan and residential parks is hard to specify, due to uneven levels of registration with local councils and changing numbers of permanent residents across parks.³³ However, it is estimated that around 16 000–17 000 people live in these parks.³⁴

Despite not specifically catering for older people, 42 per cent of park residents are aged over 55. The average age of a new resident in a park is between 65 and 70, with the average resident also receiving the aged pension.³⁵

³² Housing for the Aged Action Group Inc, *Submission*, p. 83; Victorian Caravan Parks Association, *Submission*, p. 3, 5.

³³ Peninsula Advisory Committee for Elders, *Submission*, p. 1.

³⁴ Australian Housing and Urban Research Institute, *Submission*, p. 24; Housing for the Aged Action Group Inc, *Submission*; Housing for the Aged Action Group, *Residents Committees in Caravan and Residential Parks and Villages Report*, 2012, p. 9.

³⁵ Australian Housing and Urban Research Institute, *Submission*, p. 24; Victorian Caravan Parks Association, *Submission*, p. 5.

Key concerns

One of the key issues raised in evidence in relation to caravan and residential parks was that of security of tenure. Lease and eviction terms vary across the sector, with some operators offering 99-year leases and others offering no fixed tenure at all. Long-term security of tenure for park residents is uncertain, which is a challenge for a housing model that is increasingly targeted at lower income older people.³⁶

At a public hearing in Melbourne, Ms Shanny Gordon of Housing for the Aged Action Group provided the following evidence to the Committee on this issue:

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 [Residential Tenancies Act] that allow for eviction creates a precarious situation where people might have to pay high costs to move, along with difficulties of finding another site to live on.³⁷

Ms Gordon further noted that, despite the dwellings in retirement parks being technically classified as ‘relocatable’, whether this is feasible in practice may be another matter (see also Chapter 4). This further emphasises the importance of security of tenure for this group. Ms Gordon, who provided images of these dwellings to the Committee during her presentation, said:

... as people started to become more permanent way back in the day, you can see the van that has had the annexe attached to it. And then you see things like little decks being built. So on the permanency of the structures, you might think it is really transitional and people can move whenever they please, but it is not really the case.³⁸

For more on security of tenure in relation to management standards see Chapter 6.

Residential parks are increasingly aimed at older people as an affordable retirement housing option. Facilities offered by these parks may not adequately cater for this age group, though, and, more importantly, may not be able to meet their changing needs as they age.³⁹ Ms Gordon also raised this concern in her evidence to the Committee, saying:

The general standard movable dwelling is not built with the target group in mind. Residential parks are generally targeted at people over the age of 55, but they are not designed necessarily to consider that somebody who moves in at the age of 55 might have very different needs at the age of 75 or 80.⁴⁰

Other concerns related to caravan and residential parks noted by the Committee include:

³⁶ Housing for the Aged Action Group Inc, *Submission*, p. 25.

³⁷ Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*, p. 58.

³⁸ *Ibid.*

³⁹ Housing for the Aged Action Group Inc, *Submission*, p. 83.

⁴⁰ Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*.

- Exit fees / deferred management fees and features such as communal living are not covered under the *Residential Tenancies Act 1997*
- Inadequate management training and attitudes
- Regulatory protection for residents falling behind industry growth and demand
- Infrastructure provision (such as roads and signage) may be poor.⁴¹

1.3.3 Independent living units

Independent living units (ILUs) are self-contained dwellings, typically small units, in small clusters that provide similar benefits to a retirement village.⁴² ILUs also offer varying levels of support and aged care services to residents, such as an on-site caretaker or manager and limited communal facilities and spaces.⁴³

ILUs were constructed as a form of affordable, independent social housing for older people between the mid-1950s and the mid-1980s. They were built by community organisations funded by Commonwealth subsidies under the *Aged Person's Homes Act 1954*. The construction of ILUs has been said to be the first phase of the retirement village industry in Australia.⁴⁴

Approximately 9000 ILUs were built in Victoria. Around half of these are still in operation⁴⁵ and remain community-delivered.⁴⁶ While they originally provided accommodation to groups such as ex-servicemen or ethnic and religious groups, new generation providers have evolved to meet the needs of emerging groups, such as those at risk of homelessness.⁴⁷

During the 1980s, funding provided under the *Aged Person's Homes Act 1954* ceased and in Victoria ILU models diverged into two types: those under the *Retirement Villages Act 1986* (now also known as not-for-profit retirement villages); and those under the *Residential Tenancies Act 1997*. Despite similar service and stock characteristics, Housing for the Aged Action Group differentiates the two models along financial lines as follows:

ILUs under the *Retirement Villages Act 1986* require an ongoing contribution usually up to \$200 000 (which has increased over time), payment of ongoing fees and often also an exit fee ... ILUs under the RTA require ongoing rent to be paid ...⁴⁸

⁴¹ Housing for the Aged Action Group Inc, *Submission*, p. 84; Australian Housing and Urban Research Institute, *Submission*, p. 24.

⁴² Housing for the Aged Action Group Inc, *Submission*, p. 77; Australian Housing and Urban Research Institute, *Submission*, pp. 21-22.

⁴³ Ibid. p. 23; Aged and Community Services Australia, *Submission*, p. 12.

⁴⁴ Australian Housing and Urban Research Institute, *Submission*, p. 21.

⁴⁵ Aged and Community Services Australia, *Submission*, p. 12; Australian Housing and Urban Research Institute, *Submission*, p. 16, 20; Housing for the Aged Action Group Inc, *Submission*, p. 75.

⁴⁶ Australian Housing and Urban Research Institute, *Submission*, p. 22.

⁴⁷ Aged and Community Services Australia, *Submission*, p. 12.

⁴⁸ Housing for the Aged Action Group Inc, *Submission*, p. 79.

ILUs are designed to be accessible to older people on low incomes and / or holding low-value assets. The main target demographic for ILUs are pensioners who do not own their own home, though some organisations target pensioners who own their own home and self-funded retirees.⁴⁹

The Australian Housing and Urban Research Institute estimates that the average ongoing contribution for ILUs is less than \$100 000.⁵⁰ ILU rents are also kept low, generally around 30 per cent of residents' income.⁵¹ Affordability was found to be the biggest issue for those moving into an ILU in research conducted by Housing for the Aged Action Group.⁵²

The Committee heard that 34 700 ILUs were built nationally in the 1950s, with 9000 of these in Victoria. About 6200 of these ILUs remain in Victoria, though this number is steadily declining.⁵³ Housing for the Aged Action Group refers to ILUs as the 'forgotten housing sector', as they are rarely recognised in policy debate about housing options for low income people.⁵⁴

Demographics

According to the Australian Housing and Urban Research Institute: 'An increasing proportion of [ILU] residents [are] very old, with 42 per cent aged over 80 years.'⁵⁵

Key concerns

Overall ILU stock is in decline.⁵⁶ ILU 'compounds' are often located on land that has increased in value over time, encouraging organisations to sell the properties to developers or redevelop the facilities to a more expensive form of retirement housing.⁵⁷ This then challenges the ability of the model to offer affordable housing.⁵⁸

The Australian Association of Gerontology in its submission to this Inquiry states: 'A prevailing view of many relevant NFPs [not-for-profits] is that continuing to provide ILUs is no longer financially viable.'⁵⁹

Housing for the Aged Action Group summarises the issue thus:

49 Australian Housing and Urban Research Institute, *Submission*, p. 21.

50 Ibid. pp. 21-22.

51 Housing for the Aged Action Group Inc, *Submission*, pp. 48-49.

52 Ibid. p. 27.

53 Ibid. p. 45, 79, Attachment 1 (p. 13).

54 Ibid. p. 14.

55 Australian Housing and Urban Research Institute, *Submission*, p. 22.

56 Ibid. p. 21.

57 Ibid. p. 22; Housing for the Aged Action Group Inc, *Submission*, pp. 14-15.

58 Ibid. p. 45.

59 Australian Association of Gerontology, *Submission*, p. 10.

In all cases, affordability was the most significant factor for residents in terms of why they had moved into their ILU initially, and also why they chose to stay. Unfortunately, the ongoing costs for new entrants of ILU villages are rising dramatically, despite this segment of the housing stock being designated not-for-profit. This has implications for the sector's traditional target group ...⁶⁰

Along with a decline in the number of ILUs the Committee heard evidence that the quality of housing stock is also falling. As stated, federal funding for ILUs ceased in the 1980s. As a result, existing stock is ageing, deteriorating and becoming inappropriate for the needs of existing tenants as they age and new tenants.⁶¹

Evidence provided to the Committee also suggests that the majority of residents living in ILUs, while happy with their living situations, often had very few alternative housing options and, as such, 'must' be happy with their living situation.⁶²

Other concerns relating to ILUs heard in this Inquiry include:

- The *Residential Tenancies Act 1997* does not address community living aspects of ILUs
- Legal advice is difficult to obtain due to a lack of affordable expertise
- Lack of management knowledge and experience
- Residents' difficulty communicating with management and slow resolution of issues
- Variability of pricing structures based on operator discretion.⁶³

1.3.4 Rental villages

Rental villages are said to occupy a space between retirement villages and not-for-profit independent living units. They house approximately 3000 residents across Australia.⁶⁴

Rental villages emerged around 15 years ago as a response to increasing interest from retirees who want a supported housing option with independent living conditions. The model is aimed at those with few assets and is run by private companies. Features include:

- Tenants pay 85 per cent of income as rent, including 100 per cent of the Commonwealth Rent Assistance

⁶⁰ Housing for the Aged Action Group Inc, *Submission*, p. 25.

⁶¹ Australian Housing and Urban Research Institute, *Submission*, p. 21; Australian Association of Gerontology, *Submission*, p. 10; Aged and Community Services Australia, *Submission*, p. 14; Housing for the Aged Action Group Inc, *Submission*, p. 46.

⁶² Housing for the Aged Action Group Inc, *Submission*, p. 25; Australian Housing and Urban Research Institute, *Submission*, p. 26.

⁶³ Housing for the Aged Action Group Inc, *Submission*, pp. 32, 35, 50, 79-80; Australian Housing and Urban Research Institute, *Submission*, p. 23.

⁶⁴ Housing for the Aged Action Group Inc, *Submission*, p. 81.

- Units are semi-self-contained, usually in clusters of 40–100, and without domestic facilities as a portion of the rent pays for meals and a linen service
- Utility and phone charges are paid for separately by the tenants.⁶⁵

Demographics

According to evidence provided to the Committee by Housing for the Aged Action Group, rental village tenants tend to be aged in their 80s and 90s and are mostly located in regional areas.⁶⁶

Key concerns

Key concerns raised in relation to rental villages during this Inquiry include:

- Tenant protection provisions are unclear
- Quality of support offered is variable
- High levels of rent may leave tenants with insufficient finances to allow housing mobility
- External facilities may not be appropriately designed to accommodate the needs of older people (e.g. footpaths unsuited to mobility impaired residents).⁶⁷

65 Ibid. pp. 76, 81.

66 Ibid. pp. 63, 81.

67 Ibid. pp. 64, 67, 81.

2 Supply and demand

2.1 Introduction

Demand for retirement housing can be accurately predicted using census data. The Committee received evidence that demand for retirement housing in Victoria is increasing, while, at the same time, the sector is facing challenges to meet that demand.

The main factors that influence retirement housing demand and how that demand is met include:

- Social trends
- The attraction of retirement housing
- Access to affordable new land supply and zoning issues.

2.2 Social trends

“The demand for seniors housing is expected to increase significantly in line with the ageing of the population over the coming decades. Broad changes to the housing situations of older people and the household structures in which they live have significant implications for successful ageing.”

Aged and Community Service Australia⁶⁸

The key factors influencing demand for retirement housing relate to an ageing population, the changing expectations of older people, and the influence of concepts such as ageing in place and downsizing.

It is widely known that Australia’s population is ageing, a trend that will be a main driver of growing demand for retirement housing in the coming decades. In Victoria, the number of people aged over 65 is expected to triple to make up more than 20 per cent of the state’s population by 2051.⁶⁹

The financial strength of retirees is a major concern for policy makers. Census data from 2011 indicated that home ownership is declining among people aged over 65. It has also been said that retirees are ‘asset rich but income poor’ leaving them with little wealth to retire on. Both of these trends are predicted to continue for several decades.⁷⁰

68 Aged and Community Services Australia, *Submission*, pp. 5, 11.

69 Land Department of Environment, Water and Planning, *Victoria in Future 2016: Population and household projections to 2051*, 2016, p. 2.

70 Aged and Community Services Australia, *Submission*; Victorian Caravan Parks Association, *Submission*, p. 9.

The Australian Housing and Urban Research Institute has observed that there are increasing numbers of older Australians who are unlikely to have sufficient savings for their retirement or be able to meet their health costs.⁷¹ In its submission to this Inquiry, it refers to predictions of:

... longer term declines in overall home ownership including those at older ages. There has also been a reduction in outright home ownership and increased numbers of older people taking debt into retirement. Increasing numbers of those aged 50–64 years still carry mortgage debt. In addition, increasing numbers of older people are falling out of home ownership ... Implications of falling out of home ownership or carrying a mortgage later in life is the potential inability to self-finance retirement housing.⁷²

Further research from the Australian Housing and Urban Research Institute estimates that in Australia from 2001 to 2026:

- The number of renters aged 65 and over in low-income households will increase by 115 per cent from 195 000 to 419 000
- Low-income, sole-person households are projected to grow by 120 per cent from 110 800 to 243 600
- The demand for housing suited to older, low-income couples will increase by 117 per cent from 32 200 to 69 900.⁷³

An older demographic and changes in the makeup and needs of older households are expected to place pressure on the retirement housing industry. This will strain existing resources and increase demand for a range of retirement housing options, in particular for people on lower incomes seeking affordable housing options.⁷⁴

Despite the range of housing options designed with older people in mind, evidence provided to the Committee highlighted a lack of options for lower income groups (with existing home owners and self-funded retirees well catered for).⁷⁵ Ms Shanny Gordon of Housing for the Aged Action Group told the Committee:

... we have quite a number of housing models that are available for people that might have a little bit more in the way of asset or income or if they have sold a home, but when you start to look at older people on the lower income end of the spectrum, the options are really few and far between.⁷⁶

Chapter 1 highlighted the broad age range of residents in retirement housing, each with different needs. As such, the diversity of older households has increased to now include:

71 Referred to in Aged and Community Services Australia, *Submission*.

72 Australian Housing and Urban Research Institute, *Submission*, p. 11.

73 Aged and Community Services Australia, *Submission*.

74 Residents of Retirement Villages Victoria Inc, *Submission*, p. 3.

75 Housing for the Aged Action Group Inc, *Submission*, p. 14; Australian Housing and Urban Research Institute, *Submission*, p. 19.

76 Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*, p. 60.

- More frail, older people
- More older women living on their own
- Greater numbers of people requiring some form of support
- Increasing numbers of people without a housing asset whose choices will diminish as they grow older.⁷⁷

The Australian Association of Gerontology told the Committee:

A diversity of retirement housing options is required, so that older people can make a decision that is right for them about where they live, what type of home they live in, whether they buy or rent, the support services they need, and the community setting that enables them to stay as active and autonomous as possible ...

Affordable rental is likely to be a particular problem for single older people, particularly divorced older women who do not have the housing equity that comes with combining the assets of a couple.⁷⁸

Ms Gordon emphasised the importance of maintaining a range of diverse housing options as problems can arise from a reduction in any one type of housing model. Ms Gordon said:

The more reduction we have in some of those housing options ... like the independent living unit sector, the more stress that puts on the rest of the spectrum, and then it just kind of creates a cycle of crisis which does not do anybody any good.⁷⁹

2.2.1 Increase in expectations

“Retirement villages have become nicer over time. So they have more bells and whistles now than what they used to ... And that is what the market likes.”

Mr Tony Randello, Head of Mergers and Acquisitions⁸⁰

The retirement housing industry is an industry in transition. The next generation of retirees (the ‘baby boomers’) will demand different types of accommodation, new services and more responsive management than previous generations.⁸¹

The views of many witnesses the Committee heard from can be summed up by Residents of Retirement Villages Victoria, which states in its submission:

Residents’ service expectations are changing as new generations reach retirement age. Current residents agitating for change are signalling to operators and legislators that retirement village accommodation and legislation must be responsive to these changing needs and expectations.

⁷⁷ Australian Housing and Urban Research Institute, *Submission*, p. 10.

⁷⁸ Australian Association of Gerontology, *Submission*, pp. 2, 4.

⁷⁹ Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*, p. 60.

⁸⁰ Tony Randello - Lendlease, *Transcript - 26 October 2016*, p. 8.

⁸¹ Residents of Retirement Villages Victoria Inc, *Submission*, p. 3.

The formative experiences of each generation were quite different. Accordingly, their current attitudes, interests and beliefs are quite different. This is most apparent in their attitudes to freedom, authority, desire for participation, willingness to respect and trust, and the shrinking differences between the education and earning potential of men and women. Current operator business models and the *Retirement Villages Act* owe more to the characteristics and needs of the Depression and World War II generations than the Post-War generation and do not anticipate the characteristics of the baby boomer generation.

The baby boomers are better educated, richer, more confident, more street-wise and more demanding than current residents of retirement villages. A high percentage of baby boomer women will have had a career. Boomers will not tolerate being 'parented', which is often the style of current village managers.⁸²

Aged and Community Services Australia provided similar evidence to the Committee in relation to increasing expectations. Its submission states:

Boomers aim to retire earlier than the current generation and retire with more wealth, but they also aim to 'retire' into travel, fitness, fishing, cultural activities and dining out. They will demand modern accommodation and staff geared to servicing clients who are used to controlling their lives and accessing the products and services they want and need. They will have little patience with oppressive rules and regulations. The retirement village of today purports to care for people capable of living independently, but operators seem to assume residents are only one step away from residential aged care and treat residents thus. This assumption will soon be sorely tested.⁸³

The Committee notes that these expectations may apply to those retirees with a good superannuation or a high asset base, however those without such attributes may find their expectations do not match the reality. Exploring this topic in depth falls outside the scope of this Inquiry, however the Committee believes that the retirement housing sector and governments will need to be aware of this mismatch in the near future. (See also Chapter 6 for a discussion on management standards and Chapter 7 for a discussion on dispute resolution.)

2.2.2 Ageing in place

The concept of 'ageing in place' most commonly refers to the view that both high- and low-level aged care services should be provided to people in their homes for as long as possible. The concept has also been applied to senior living more broadly i.e. not just those living in aged care residencies. The implication for retirement villages in particular is the expectation of retirees that they will be able to access aged care services in their own units.

Retirement villages enable residents to age in place by linking them to home support services, packaged care or providing services that can be purchased from the village. As a result, retirees may be able to stay in their villages for longer and enter residential care later in life than others in the broader community.⁸⁴

⁸² Ibid. pp. 6, 38.

⁸³ Aged and Community Services Australia, *Submission*, p. 21.

⁸⁴ Ibid. p. 6.

In its submission to this Inquiry, the Australian Association of Gerontology refers to research which found that ‘... older people wanted to be supported to stay at home as long as possible. Earlier research has found that much of this desire to age in place related to emotional and social attachment to their locale rather than to their specific dwelling.’⁸⁵

The Property Council of Australia told the Committee that the Productivity Commission attributes growing demand in the retirement village sector to the increasing number of older Australians who wish to age in their own homes, something which the Property Council of Australia says is easier in a retirement village.⁸⁶

According to the Australian Housing and Urban Research Institute, the growing demand for aged care services will drive growth in the retirement housing sector, as well as challenging the sector and policy makers to ensure this demand is met.⁸⁷

2.2.3 Downsizing

The Committee received a small amount of evidence on the issue of ‘downsizing’ (or ‘rightsizing’ as it is also known). For example, the Victorian Caravan Parks Association told the Committee that the biggest barrier preventing older people from downsizing is finding age-appropriate options in areas where they want to live (good services, close to family etc).⁸⁸

In its submission to this Inquiry, the Australian Association of Gerontology refers to a 2015 survey which found:

- Around 16 per cent of 55–64 year olds and 25 per cent of those aged 64 and over had already downsized
- The most common reasons for downsizing were:
 - to live in a smaller house that is easier to maintain
 - to reduce housing costs
 - to reduce the size of the garden
- Of those who had not already downsized, 80 per cent said they would downsize in the future
- 58 per cent thought the costs of downsizing were too high
- 44 per cent did not believe there were enough affordable housing options in the area where they wanted to live.⁸⁹

⁸⁵ Australian Association of Gerontology, *Submission*, p. 2.

⁸⁶ Property Council of Australia (Victoria Division), *Housing Our Ageing Population: A New Approach*. p. 2.

⁸⁷ Australian Housing and Urban Research Institute, *Submission*.

⁸⁸ Victorian Caravan Parks Association, *Submission*.

⁸⁹ Australian Association of Gerontology, *Submission*, p. 3.

2.3 Reasons for moving into a retirement village

Demand for retirement housing is driven by more than demographics. The attractiveness of the sector to retirees is another important contributor. (As elsewhere in this Report, the majority of evidence received by the Committee on this subject concerns retirement villages. See also Appendix 3 – Retirement housing models and their related features.)

According to Aged and Community Services Australia, the five most common reasons for moving into a retirement village are:

- Assistance in case of declining health
- Not putting pressure on the family to provide care
- Convenient location to facilities
- Assistance with household and gardening chores
- Less stress.⁹⁰

The Committee heard that retirement village residents report enjoying more social support and social activities. They also tend to make more new friends and feel a greater sense of security than when living in the broader community.⁹¹ Aged and Community Services Australia argues that these benefits result in improved community connection and a reduction in admissions to acute or residential care.⁹²

Ms Ronda Held, Council on the Ageing Victoria's Chief Executive Officer, told the Committee that residents enjoy living in retirement villages because "... they can stay independent, have a safe environment, have emergency support and access the facilities".⁹³

In its submission to this Inquiry Aged and Community Services Australia refers to a survey which found that 95 per cent of the 10 500 retirement village residents surveyed participated in activities organised by their village.⁹⁴

A view from the sector itself was provided by Mr Andrew Philip from Retirement Communities Australia. He told the Committee:

Retirement villages are probably in some ways a quintessential affordable housing model ... but also villages offer terrific care services and other services for residents and provide solutions to the very sad reality of social isolation, affordable lifestyles for people generally over the age of 65 and in many ways a reduced cost of living. So if you live in a retirement village, you get the enormous benefit of bulk buying –

⁹⁰ Aged and Community Services Australia, *Submission*, p. 18.

⁹¹ Property Council of Australia, *Submission*.

⁹² Aged and Community Services Australia, *Submission*, p. 7.

⁹³ Ronda Held - Council on the Ageing Victoria, *Transcript - 16 November 2016*.

⁹⁴ Aged and Community Services Australia, *Submission*, p. 7.

community buying of things like electricity services, telephone services and internet services. Most residents in retirement villages get terrific value for money in their day-to-day living costs.⁹⁵

Mr Michael Julian, a resident of the Peninsula Grange Retirement Community, simply told the Committee: “We are very happy here and enjoy the lifestyle and the company of like-minded people in the village.”⁹⁶

The Committee heard slightly different evidence regarding the reasons why people choose to live in a caravan park. In its submission to this Inquiry, the Australian Housing and Urban Research Institute states that caravan park residents can be divided into three major groups:

- People making a deliberate choice to live in a caravan park for reasons of lifestyle, including affordability and flexibility compared to other forms of housing
- Itinerant or seasonal workers in the construction industry, farming and fruit pickers or other lower paid jobs who choose to live long-term or permanently in caravan parks also as a lifestyle choice
- People who move into a caravan park as a last resort because there is no other suitable alternative at a particular time in their lives.⁹⁷

2.4 How to meet demand

“There are only five operators in Australian that are building more than 150 units per year.”

Mr Stewart Gull, Director, Country Club Villages⁹⁸

The Australian Association of Gerontology referred the Committee to research by the Retirement Living Council that identified:

- A strong demand for seniors housing in the middle ring of suburbs of most capital cities
- An apparent mismatch of between supply and demand for seniors housing.

The research also reported a trend of seniors moving away from central business districts to urban fringe locations, where service provision and support infrastructure is poor. It is thought that this movement could be due to factors such as affordability and availability of appropriate housing options.⁹⁹

⁹⁵ Andrew Philip - Retirement Communities Australia, *Transcript - 12 October 2016*, p. 2.

⁹⁶ Michael Julian - Resident Peninsula Grange Retirement Community, *Transcript - 5 October 2016*.

⁹⁷ Australian Housing and Urban Research Institute, *Submission*, p. 24.

⁹⁸ Stewart Gull - Country Club Villages, *Transcript - 19 October 2016*, p. 2.

⁹⁹ Australian Association of Gerontology, *Submission*, p. 5.

2.4.1 Access to land

The Committee discussed the issue of retirement housing supply with several sector representatives. At a public hearing in Ballarat, Mr Stewart Gull of Country Club Villages told the Committee that demand resulting from demographic changes can be predicted and that current development rates are not keeping pace with this demand. He said:

It is fundamentally impossible to build a retirement village in a year. The numbers are very difficult to deal with when looking at the future of retirement villages – the statistics and demographics. We need to really develop 100 000 units across Australia over the next ten years, but the fundamentals of that are that the industry will only develop about 5000 units ... It is going to be a supply problem.

... the average from when a person buys the land to actually develop the land is somewhere between four and five years – to go through the process, fund the process, drag the services into the site and build the facilities.¹⁰⁰

Mr Gull added that finding a suitable location for a retirement village is just one of the challenges that operators face. He said:

... it just is not as simple as it sounds. You just buy this land, put up some units, put in these facilities and it just flows. I think it would be a good idea to know not only developers' capacity but the funding capacities of how Victoria supplies a lifestyle for retirees. I think that is our challenge. Every developer will tell you the same thing: 'We can't find the land. We can't find suitable land. The land has got to be relatively level. You can't go on cliff faces. It's got to be close to services. The town has got to have hospitals. It has got to have services within it'.¹⁰¹

Mr Gull's statement supports evidence provided to the Committee by the Property Council of Australia. In its submission it states: 'Retirement villages cannot be built fast enough to meet demand. As Victoria's population continues to age, this demand is expected to outstrip supply by more than 30 per cent.'¹⁰²

The Committee heard that a major problem for retirement village operators is the ability to develop land close to services and amenities. This problem is exacerbated by competition the sector faces from residential developers.¹⁰³ The Committee learnt that this problem is not limited to Victoria but is reported in many international jurisdictions.¹⁰⁴ Mr Tony Randello from Lendlease told the Committee that retirement village operators find it difficult to compete with residential developers, who are in a stronger financial position when purchasing land. Mr Randello said:

... most of the time we are competing with residential developers, we are not competing with just retirement developers. So highest and best use of land in Victoria right now is not retirement, it is residential. For that reason, without having any retirement-specific zone, it is going to be very hard for us to meet the demand if we

¹⁰⁰ Stewart Gull - Country Club Villages, *Transcript - 19 October 2016*.

¹⁰¹ *Ibid.* p. 8.

¹⁰² Property Council of Australia, *Submission*, p. 3.

¹⁰³ Aged and Community Services Australia, *Submission*, p. 6.

¹⁰⁴ Australian Association of Gerontology, *Submission*, p. 10.

are assuming the same demand that we have had in the past. If we assume a five per cent or six per cent penetration rate of 65-year-old Australians, we need to produce something like 5000 or 6000 units a year. We are not coming close to that.¹⁰⁵

One outcome of these pressures currently faced by the sector is that the concept of a retirement village will change in the near future. Instead of designing villages as a collection of units on 20–30 acre blocks of land, high-rise retirement developments will become increasingly common. Such developments, known as ‘vertical villages’, are already appearing in inner-city areas in Australia.¹⁰⁶

2.4.2 Zoning / planning

“Governments make provision for other social needs, many of which are not government-owned assets, such as schools, hospitals and childcare facilities, and should do the same to facilitate more retirement villages in locations where older Australians want to live.”

Australian Unity¹⁰⁷

Some industry representatives the Committee spoke with argued for the creation of specific retirement housing zoning in Victoria’s planning scheme. For example, Mr Philip told the Committee:

Ideally, the panacea would be to have a zoning that was identified for retirement villages, and there are areas which suit retirement villages really well but do not necessarily suit other forms of domestic housing ... If we had a planning regime that prioritised retirement villages in some logical areas ... I think we could get a lot more better positioned villages and therefore more successful ones, complementing other forms of housing.¹⁰⁸

Mr Randello told the Committee: “The silver bullet would be a specific retirement living zone in our planning scheme.”¹⁰⁹

Mr James Guy from the City of Ballarat told the Committee that Ballarat does not zone areas for retirement housing. However, it remains committed to ensuring its planning does not impede the development of the sector.¹¹⁰ Similar evidence was presented to the Committee by Mornington Peninsula Shire’s Ms Rosalyn Franklin, who told the Committee:

The role of local government is somewhat limited. It is noted that although local government has a role as a planning authority, ultimately changes would need to be put in place by the Minister for Planning, and there is metropolitan planning too that of course does have an impact.¹¹¹

¹⁰⁵ Tony Randello - Lendlease, *Transcript - 26 October 2016*, p. 6.

¹⁰⁶ www.afr.com/real-estate/commercial/australian-unity-to-build-vertical-retirement-village-20150128-130qyj (Accessed November 2016)

¹⁰⁷ Australian Unity, *Submission*, p. 9.

¹⁰⁸ Andrew Philip - Retirement Communities Australia, *Transcript - 12 October 2016*.

¹⁰⁹ Tony Randello - Lendlease, *Transcript - 26 October 2016*.

¹¹⁰ James Guy - City of Ballarat, *Transcript - 19 October 2016*.

¹¹¹ Rosalyn Franklin - Mornington Peninsula Shire Council, *Transcript - 5 October 2016*.

Aside from the specific request for retirement housing zoning, much of the evidence received by Committee regarding planning and zoning used non-specific language such as ‘improve’ and ‘simplify’. For example, in its submission Aged and Community Services Australia identifies a need for ‘efficient planning approval mechanisms’ and ‘minimal regulation and red tape for construction’.¹¹² It also makes a more specific recommendation, that the term ‘seniors accommodation’ be included in legislation to give it special planning consideration.¹¹³

RECOMMENDATION 1: That the Minister for Planning give consideration to planning provisions that encourage increased supply of retirement housing, such as the establishment of Retirement Housing Zones.

112 Aged and Community Services Australia, *Submission*, p. 15.

113 *Ibid.* p. 7.

3 Legislation

3.1 Introduction

“The regulatory framework presiding over retirement housing is intricate and requires a fairly high level of expertise and knowledge to be able to navigate.”

Housing for the Aged Action Group¹¹⁴

In Victoria, the three major pieces of legislation that cover the different forms of retirement housing are:

- *Retirement Villages Act 1986*
- *Residential Tenancies Act 1997*
- *Owners Corporations Act 2006*.

(Appendix 4 provides an overview of all retirement housing legislation in Victoria and its related forms of housing.)

Determining which Act covers what form of retirement housing depends on a number of factors, including housing type and the financial model that applies to the housing (for example, one ingoing payment, rent, strata purchase etc). The two Acts that the Committee considered the most during this Inquiry were the *Retirement Villages Act 1986* and the *Residential Tenancies Act 1997*. These Acts differ in how they legislate factors such as disclosure of information, contract requirements and dispute resolution.¹¹⁵

3.2 *Retirement Villages Act 1986*

The *Retirement Villages Act 1986* covers both for-profit and not-for-profit retirement villages in Victoria. The Act defines a retirement village as a community:

- (a) The majority of which is retired persons who are provided with accommodation and services other than services that are provided in a residential care facility; and
- (b) At least one of whom, before or upon becoming a member of the community, pays or is required to pay an in-going contribution.¹¹⁶

¹¹⁴ Housing for the Aged Action Group Inc, *Submission*, p. 68.

¹¹⁵ WEstjustice, *Submission*, p. 9; Consumer Action Law Centre, *Submission*, p. 23.

¹¹⁶ *Retirement Villages Act 1986* section 3.

Relevant amendments introduced since the *Retirement Villages Act 1986* commenced include:

- *Retirement Villages Amendment (Information Disclosure) Act 2013*
- *Retirement Villages Amendment (Records and Notices) Regulations 2013*
- *Retirement Villages Amendment (Contractual Arrangements) Regulations 2013.*

These amendments came into effect in 2014. Their aim was to increase the transparency of information provided by retirement village operators, including via factsheets, disclosure statements and a standard format for retirement village contracts.¹¹⁷ The Committee heard that these amendments have been received favourably across the sector (see Chapter 4).

The *Owners Corporations Act 2006* also applies to villages where residents have purchased a strata title.¹¹⁸

3.3 ***Residential Tenancies Act 1997***

The *Residential Tenancies Act 1997* regulates rental accommodation in Victoria (but with no specific regulation of accommodation provided to senior Victorians). If a development provides accommodation for retired persons, but all residents only occupy their unit under a rental model, and no resident has been required to pay an ingoing contribution for the right to reside in the development, the *Residential Tenancies Act 1997* applies.¹¹⁹

Currently the *Residential Tenancies Act 1997* covers the following housing models relevant to this Inquiry:

- Caravan and residential parks
- Independent living units
- Rental villages.

Relevant amendments and regulations introduced since the Act commenced include:

- *Estate Agents (Retirement Villages) Regulations 2006*
- *Residential Tenancies Regulations 2008*
- *Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2010*
- *Residential Tenancies (Rooming House Standards) Regulations 2012*

¹¹⁷ Consumer Affairs Victoria Simon Cohen - Director, *Transcript - 28 September 2016*, p. 2; Australian Association of Gerontology, *Submission*, p. 11.

¹¹⁸ Housing for the Aged Action Group Inc, *Submission*, p. 77.

¹¹⁹ *Residential Tenancies Act 1997 (Part 1 Division 2)*.

- *Retirement Villages (Contractual Arrangements) Regulations 2006*
- *Retirement Villages (Records and Notices) Regulations 2015.*

The main area of concern regarding the *Residential Tenancies Act 1997* raised in evidence received during the Inquiry is the lack of security of tenure for residents. This issue is discussed in detail in Chapter 6.

The *Residential Tenancies Act 1997* is undergoing an extensive review as part of the Victorian Government's Fairer Safer Housing initiative. The review is expected to be completed in 2017 and its progress can be followed via its website.¹²⁰ The Committee awaits the review's findings with interest but does not comment further on Fairer Safer Housing in this Report.

3.3.1 Caravan and residential parks

Along with retirement villages, the Committee received a great deal of evidence on caravan and residential parks. Caravan and residential park residents are covered by either Part 4 or Part 4A of the *Residential Tenancies Act 1997*. Part 4 covers residents who lease their dwelling. Part 4A covers residents who own their own caravan or dwelling and rent the site on which their home is located.¹²¹ Part 4A was introduced in 2011 to regulate the growing number of residential parks in Victoria.¹²²

Of particular relevance is the *Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2010*, which legislates:

- Registration with local council and associated duties on owners
- Fees for registration
- Standards for fire safety and emergency management planning in caravan parks
- Construction standards and installation requirements for movable dwellings in parks
- Standards for services and amenities and the maintenance of sites and dwellings.

The *Australian Consumer Law and Fair Trading Act 2012* covers the purchase of a dwelling in a caravan or residential park, which is a separate arrangement to the site agreement.¹²³

¹²⁰ Consumer Affairs Victoria *Fairer Safer Housing*; www.fairersaferhousing.vic.gov.au/home (accessed January 2017)

¹²¹ Victorian Caravan Parks Association, *Submission*, p. 4; Housing for the Aged Action Group Inc, *Submission*, p. 81.

¹²² Russell Kennedy Lawyers, *Submission*, p. 7; Victorian Caravan Parks Association, *Submission*, p. 6

¹²³ Australian Housing and Urban Research Institute, *Submission*, p. 29.

Several Inquiry stakeholders recommended the creation of distinct legislation for caravan and residential parks, separate to the *Residential Tenancies Act 1997*, that would: specify the rights and responsibilities of park operators and residents; define key terms; and clarify matters such as deferred management fees, utility rates and rent increases. Evidence in support of this argument included:

- The ‘unique’ nature of caravan and residential parks as a housing option
- The rapid growth of the sector
- The likelihood of increasing demand for this type of affordable housing option in the future.¹²⁴

The Committee heard that separate legislation for residential parks exists in Western Australia, South Australia, New South Wales and Queensland.¹²⁵

3.4 Complexity and confusion

“The retirement housing sector in Victoria is complex, poorly defined and subject to overlapping legislation. This in turn can create complexity and confusion in drafting and interpreting contracts, which are often lengthy and difficult to navigate. Frequently, the rights, responsibilities, and legislative constraints on parties are unclear, or at least arguable.”

Consumer Action Law Centre¹²⁶

A common complaint expressed to the Committee during this Inquiry was that ‘overlapping’ legislation for the different forms of retirement housing is confusing and difficult for both residents and operators to navigate.¹²⁷ The Committee heard that it is common for residents not to understand their rights, or how to exercise them,¹²⁸ nor know how to obtain reliable legal advice.¹²⁹ These difficulties were said to be a major driver of contractual issues and disputes¹³⁰ or even favour owners and managers over residents.¹³¹ The main concerns raised during this Inquiry are discussed throughout the remainder of this Report, with the Committee making recommendations addressing these concerns.

124 Victorian Caravan Parks Association, *Submission*, pp. 14-15; Housing for the Aged Action Group Inc, *Submission*, p. 27; Mornington Peninsula Shire Council, *Submission*, p. 8; Shanny Gordon, *Retirement Housing Background Paper*. Housing for the Aged Action Group, COTA (Council on the Ageing) Vic, Residents of Retirement Villages Victoria Inc, and the Consumer Action Law Centre.

125 Housing for the Aged Action Group Inc, *Submission*, p. 27.

126 Consumer Action Law Centre, *Submission*, p. 21.

127 WEStjustice, *Submission*, p. 5; *Retirement Villages Act 1986, Residential Tenancies Act 1997, Owners Corporations Act 2006, Supported Residential Services (Private Proprietors) Act 2010, Health Services Act 1988, Aged Care Act 1997 (Cth)*; Law Institute of Victoria, *Submission*, p. 1; Consumer Action Law Centre, *Submission*, p. 22; Consumer Action Law Centre, et al., *Submission to Consumer Affairs Victoria’s Retirement Villages Regulations Review*, 2015; Residents of Retirement Villages Victoria Inc., *Submission to the Department of Justice and Regulation’s Access to Justice Review*, 2015, p. 9; Consumer Affairs Victoria Simon Cohen - Director, *Transcript - 28 September 2016*, p. 4; Consumer Action Law Centre, *Submission*, p. 34; Housing for the Aged Action Group Inc, *Submission*, p. 5; Charles Adams, *Submission*, p. 6.

128 Housing for the Aged Action Group Inc, *Submission*, p. 66; Australian Housing and Urban Research Institute, *Submission*, p. 30; Housing for the Aged Action Group Inc, *Submission*, p. 66.

129 *Ibid.* p. 58.

130 Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*, p. 60; Consumer Affairs Victoria Simon Cohen - Director, *Transcript - 28 September 2016*, p. 8; WEStjustice, *Submission*, p. 17.

131 Residents of Retirement Villages Victoria Inc., *Submission to the Department of Justice and Regulation’s Access to Justice Review*, 2015, p. 9.

3.4.1 Legal advice

“In our view, very few retirement village residents would be capable of understanding their rights under these provisions without expert assistance.”

Residents of Retirement Villages Victoria¹³²

Access to adequate legal advice is critical if retirees are to navigate the legislative and contractual complexities they are presented with and understand their rights and obligations.¹³³ At a public hearing in Melbourne, Ms Rachel Lane of Aged Care Gurus said:

You really do need the legal advice, because cost is only one piece of the puzzle. What we would not want to do is incentivise consumers to go for the cheapest but not understand their legal obligations under that price; likewise, we do not want them to go for the most expensive with the expectation that that somehow gives them greater rights and fewer responsibilities, because that is not true either.¹³⁴

The Committee received evidence that it can be difficult to obtain adequate legal advice about retirement housing. Legal assistance was found to be cost prohibitive¹³⁵ and stakeholders also identified a scarcity of legal professionals appropriately trained or experienced in retirement housing legislation.¹³⁶

These issues are discussed in more detail in Chapter 4.

3.4.2 To simplify or not to simplify?

The Committee received a large volume of evidence that legislation covering retirement housing – the 2014 changes notwithstanding – is confusing and difficult to navigate. Some residents’ groups and legal representatives stated that the legislation is too complex to be understood by those who would be protected by it and that the existing legislation, therefore, is unable to provide appropriate consumer protections.¹³⁷ Several stakeholders called for either a full review of the existing Acts (particularly the *Retirement Villages Act 1986*) or the creation of specific retirement housing legislation.¹³⁸

¹³² Consumer Action Law Centre, *Submission*, p. 22.

¹³³ Geoff Bowyer - Managing Director Beck Legal Bendigo, *Transcript - 28 September 2016*, p. 47.

¹³⁴ Rachel Lane - Aged Care Gurus, *Transcript - 29 November 2016*, p. 48.

¹³⁵ Geoff Bowyer - Managing Director Beck Legal Bendigo, *Transcript - 28 September 2016*, p. 44; Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*, p. 60; Geoff Bowyer - Managing Director Beck Legal Bendigo, *Transcript - 28 September 2016*, p. 47; Consumer Action Law Centre, *Submission*, p. 23.

¹³⁶ Ibid. p. 23; Margaret Scott Simmons, *Transcript - 29 November 2016*, p. 21; Steven Sapountsis - President Law Institute of Victoria, *Transcript - 29 November 2016*, p. 41; Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*, p. 60.

¹³⁷ Margaret Scott Simmons, *Transcript - 29 November 2016*, p. 20; Geoff Bowyer - Managing Director Beck Legal Bendigo, *Transcript - 28 September 2016*, p. 44; Consumer Action Law Centre, *Submission*, p. 1; Fair Go For Pensioners (FGFP), *Submission*, p. 1; Australian Association of Gerontology, *Submission*, p. 11; Residents of Retirement Villages Victoria Inc., *Submission to the Department of Justice and Regulation's Access to Justice Review*, 2015. p. 9; Charles Adams, *Submission*, p. 6.

¹³⁸ Fair Go For Pensioners (FGFP), *Submission*, p. 1; Pinnacle Living, *Submission*, p. 2; Consumer Action Law Centre, *Submission*, p. 23; Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*, p. 62; Australian Association of Gerontology, *Submission*, p. 11; Housing for the Aged Action Group Inc, *Submission, Attachment 1*; Charles Adams, *Transcript - 29 November 2016*, p. 2.

The Victorian Ombudsman, Ms Deborah Glass, told the Committee that the overlapping nature of the legislation makes it difficult to simplify. Ms Glass said:

... there are so many pieces of legislation in there. You have got the [*Retirement Villages Act 1986*], you have got the [*Residential Tenancies Act 1997*], you have got the commonwealth legislation, you have got various different bodies, including strata title and owners corporation provisions, depending on the nature of the facility. Looking at that I cannot see an obvious way of streamlining it. It would be nice to think it were possible, but practically speaking I think that is very, very tricky.¹³⁹

The Ombudsman provided the Committee with a visual overview of the dispute resolution process in the retirement housing sector. This chart can be found at Appendix 5.

Some retirement housing operators argue that simplifying the existing legislation would be detrimental to market flexibility, as it would remove opportunities for innovation and consumer choice.¹⁴⁰

Mr Steven Sapountsis, President of the Law Institute of Victoria (LIV), presented a possible middle way between these two alternatives: that of enhancing ‘essential rights’ for retirement housing residents within the existing legislative framework.

At the heart of the matter for different solicitors giving advice is protecting their clients’ rights. To my mind there may be two or three essential rights you need protected. There is the tenure, for instance, your financial obligations and your entitlement when you leave. I wonder if there is some merit in considering whether we should preserve those rights in the piece of legislation, that regardless of what the contract says, there are certain basic rights that the tenant has and in some ways it does not matter what you do on the edges with all your contracts as well.¹⁴¹

The Committee believes that the wide variety of retirement housing options available to retirees – from caravans and ILUs through to luxury villas in retirement villages – makes complex and at times overlapping legislation unavoidable. Multifaceted areas of society demand complex legislation. Importantly though, this does not deny the need for periodic reviews of legislation with a view to simplifying and improving where possible.

Currently, legislation favours a broader, less prescriptive approach¹⁴² where operators and residents negotiate specific agreements. Although this can be problematic (where there is a power imbalance between operator and resident for example) the Committee believes that the *Retirement Villages Act 1986* currently strikes the right balance between consumer protection and the retirement village sector’s ability to innovate and grow. (As noted, the Committee does not include the Fairer Safer Housing review of the *Residential Tenancies Act 1997* in this discussion.)

¹³⁹ Deborah Glass - Victorian Ombudsman, *Transcript - 28 September 2016*, p. 42.

¹⁴⁰ Consumer Affairs Victoria Simon Cohen - Director, *Transcript - 28 September 2016*, p. 4; Rachel Lane - Aged Care Gurus, *Transcript - 29 November 2016*, p. 45.

¹⁴¹ Steven Sapountsis - President Law Institute of Victoria, *Transcript - 29 November 2016*, p. 46.

¹⁴² Consumer Affairs Victoria Simon Cohen - Director, *Transcript - 28 September 2016*, pp. 6-7.

However, as stated, the retirement village sector is rapidly growing. The next several years will see an increasing demand for retirement housing. The Committee believes that it will be important for the *Retirement Villages Act 1986*, which has not been fully reviewed since 2004, to provide an adequate framework to respond to this growth.

The Inquiry's Terms of Reference did not require the Committee to do a wholesale review of legislation. However, the Committee has identified several opportunities for improvement throughout the whole of the retirement housing sector and made recommendations accordingly. These are covered in detail in the following chapters.

RECOMMENDATION 2: That the Victorian Government review the *Retirement Villages Act 1986*. The review should determine the effectiveness of the Act in providing consumer protection while allowing growth and innovation in the sector.

4 Retirement housing contracts

4.1 Introduction

“In many ways, buying a retirement village unit is even more complicated than buying any other type of residential property. There are different forms of legal title and occupancy rights available, there is the ongoing cost of services and maintenance of facilities in the village, and then what fees, charges or capital gain sharing may apply when the unit is sold again later on.”

Seniors Housing Online¹⁴³

Retirees moving into a form of retirement housing are usually required to sign a contract. These documents can be long and technical, which means the person signing may not fully understand their rights and obligations. As part of its evidence-gathering process the Committee viewed a number of retirement village contracts, including strata titles and long-term leases and licences. These ranged from 25 pages to over 100 pages.

The Committee heard that residents who find contracts complex and difficult to understand are at a disadvantage. Mr Colin Smith from Sackville Grange Retirement Village states in his submission that even when residents obtain legal advice ‘... many buyers remain confused or ignorant ...’¹⁴⁴ Other submissions suggest that the reality of what a contract means only becomes clear when residents have lived in a retirement village for a period of time.¹⁴⁵

Mr Ben Cording, Principal Solicitor at the Tenants Union of Victoria, said a similar argument could be made about caravan park contracts. Mr Cording told the Committee: “I have seen a plethora of agreements that contain egregious terms and it is very difficult – even for me with eight years of uni and all of that – to identify what the actual net cost is.”¹⁴⁶

Similarly, with residential parks Mr Tom Jeavons from the Peninsula Advisory Committee for Elders said “... many residents report the fact that when they signed the contract ... the contract that was signed was not clear and they did not fully understand the implications of each of the statements”.¹⁴⁷

¹⁴³ Seniors Housing Online Legal title in retirement villages - pros and cons of different occupancy rights www.seniorshousingonline.com.au/news/110/Legal-title-in-retirement-villages-pros-and-cons-of-different-occupancy-rights (Accessed November 2016)

¹⁴⁴ Colin Smith, *Submission*, p. 2.

¹⁴⁵ Pam Kisbee, *Submission*.

¹⁴⁶ Ben Cording - Principal Solicitor, Tenants Union of Victoria, *Transcript - 16 November 2016*.

¹⁴⁷ Tom Jeavons - Deputy Chair Peninsula Advisory Committee for Elders (PACE), *Transcript - 16 November 2016*.

4.2 Information required to be provided to potential residents

This situation is likely to have improved over recent years. Changes to the *Retirement Villages Act 1986*, which came into effect in 2014,¹⁴⁸ affected regulations, factsheets and pre-contract disclosure statements. In its submission, the Property Council of Australia argues that the 2014 changes provide ‘... transparent, clear disclosure for consumers and [have] been well received by consumers and operators’.¹⁴⁹

Since 2014, retirement village operators must provide potential residents with:

- Factsheets
- The entry payment amount
- Calculations of estimated future deferred payments
- Ongoing service and maintenance fees
- An example contract.¹⁵⁰

Mr Andrew Philip from Retirement Communities Australia told the Committee that residents are now very well informed prior to signing a contract. He said:

The disclosure statement that is now required is quite extensive. For example, on the matter of deferred payments it now has a worked example, so that residents, before they come anywhere close to signing a contract, they know — in fact they have had 21 days to know — what they are going to pay when they arrive and when they leave. The worked examples of what they will pay when they leave are required to be disclosed after one year of occupancy, two years of occupancy, five years and ten years, so there is a really good, clear disclosure as to what the costs of moving into a village are and what they will be when you leave. And of course the monthly levy for services is also disclosed.¹⁵¹

In its submission to this Inquiry, National Seniors Australia agreed that potential residents now have a greater awareness of their rights and responsibilities. It attributes this knowledge to information that village operators must provide, such as factsheets and other material from CAV. However, it adds:

¹⁴⁸ *Retirement Villages (Records and Notices) Regulations and Retirement Villages (Contractual Arrangements) Regulations*. They require retirement village operators to: provide an information factsheet (in the approved form) to prospective residents enquiring about the village, to help them compare villages; allow prospective residents to inspect particular documents held by the operator including, for example, the site plan of the village; provide an expanded pre-contract disclosure statement (in the approved form) to those intending to sign a contract, to help them understand the costs of moving into, living in, and leaving their unit. They use standard content and layout in retirement village contracts to make them easier to understand and compare. Content will have to include a basic set of mandatory rights and responsibilities of residents, managers and owners. See: www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages/choosing-a-retirement-village/before-you-sign-a-retirement-village-contract#what-must-a-retirement-village-provide-before-i-sign-a-contract.

¹⁴⁹ Property Council of Australia, *Submission*, p. 14.

¹⁵⁰ See: Consumer Affairs Victoria, *Retirement Villages* (www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages) (Accessed November 2016)

¹⁵¹ Andrew Philip - Retirement Communities Australia, *Transcript - 12 October 2016*.

... much detail is specific to each village contract and the varying types of contractual arrangements, even within a village, continue to cause confusion for prospective residents. Specialist advice is required to ensure a prospective resident has full understanding of the contract and the implications as relevant to their personal circumstances.¹⁵²

Further discussion on the provision of legal advice to potential residents is found below.

Mr Clayton Severino, Senior Legal Counsel at Stockland, told the Committee that it can be difficult to ensure residents are well informed but not overwhelmed by information. Mr Severino said: “I guess you have got to get that balance right. You really need to deal with the key issues, I think; otherwise people sort of zone out if they have got to read a very voluminous document.”¹⁵³

Ms Rosemary Southgate from Russell Kennedy Lawyers was of the view that too much information is now provided. She believed that while the 2014 changes have improved consumer protections for retirement village residents, there was room for improvement with residential parks. Ms Southgate said:

I think there are also very good obligations now on operators around disclosure, so again things that were not very clear historically, particularly around deferred payments and exit contributions, are now clearly set out in a template form of disclosure statement. There are security of tenure arrangements. Those types of things I think are well protected, particularly in the retirement villages legislation. In residential parks they are probably not quite as well protected. I think that is a growing area, so it is something that is still, I expect, being gradually reviewed as and when those developments increase. I think in that area there could probably be a greater level of disclosure; more simple summary information could be made available for prospective residents.¹⁵⁴

Dr Timothy Kyng from Macquarie University suggested that potential residents should be provided with a ‘comparison rate’ document. This could be similar to ones provided to credit consumers under the National Credit Code. Such a document, he argued, “... would allow consumers to make a better-informed decision and also maybe to renegotiate the terms of the contract with the operator and have a slightly lower entry fee in return for a higher deferred management charge or whatever”.¹⁵⁵

Dr Kyng told the Committee that he has applied for a grant from Financial Literacy Australia to develop an online calculator that will allow potential residents to input fees from different retirement villages and make a simple comparison. If successful in his funding bid, this would be a useful comparison tool for potential retirement village residents.

¹⁵² National Seniors Australia, *Submission*, p. 4.

¹⁵³ Clayton Severino - Senior Legal Counsel Stockland, *Transcript - 12 October 2016*.

¹⁵⁴ Rosemary Southgate - Russell Kennedy Lawyers, *Transcript - 28 September 2016*.

¹⁵⁵ Dr Timothy Kyng - Macquarie University, *Transcript - 16 November 2016*.

It is important to note that the Committee received evidence from residents who signed their contracts prior to 2014 as well as some who have moved into their village following these changes. This means that some of the issues it heard may have been 'solved' by the changes made to the *Retirement Villages Act 1986* in 2014.

Australian Unity's Mr Derek McMillan said the full impact of the changes will take some time to be fully appreciated. He said:

I think they have only really come to fruition here in Victoria since 2014, so many of the concerns that we may be receiving from family members relate to contracts that were written before this century and therefore they did not have necessarily that same clarity of understanding that residents have now.¹⁵⁶

The Committee believes consumer awareness and protection is greater now for residents of retirement villages. As Mr McMillan stated, these changes have only been in place for several years, meaning that more time may be required in order to judge their effectiveness.

The Committee agrees with Mr Simon Cohen from CAV regarding the need to evaluate these reforms in the near future. Mr Cohen stated:

These sorts of reforms do not mend things that have happened before; they really look forward and hopefully improve the situation for people into the future. I think it is the sort of thing where you would look to us after a period of time to actually be undertaking some assessment to understand how successful those have been, but they are reasonably recent reforms, and at this point in time we have not done that.¹⁵⁷

Mr Cohen added that the number of complaints about retirement villages received by CAV is currently decreasing. This may be due to the recent reforms to the *Retirement Villages Act 1986* (or disappointment that CAV's decisions are not binding as discussed in Chapter 7). Mr Cohen said:

One possible explanation for that is that the improvements that were made to contract disclosures in 2014 may be reducing some of the common causes of complaint that we have seen ... I am aware of the range of issues that have arisen in relation to contracts that have been entered previously and particularly in relation, I suppose, to some of the surprises people get when it comes to the exiting of a retirement village and the amount of exit entitlement they may receive.¹⁵⁸

The Committee found the information on retirement villages on the CAV website to be extensive and easily understood. Indeed, the Committee drew on this information frequently in producing this Report. However, it is clear that this information is not reaching its full audience in the way that it should and could. The Committee believes this problem would be solved by providing the information to potential retirement village residents.

¹⁵⁶ Derek McMillan - CEO Independent and Assisted Living Australian Unity, *Transcript - 16 November 2016*.

¹⁵⁷ Simon Cohen - Director, Consumer Affairs Victoria, *Transcript - 28 September 2016*.

¹⁵⁸ Ibid.

RECOMMENDATION 3: That Consumer Affairs Victoria collate its online ‘Retirement villages’ information into a booklet. Retirement village operators must provide this booklet to potential residents, either as a hard copy or electronically.

4.3 Standard format but not standard contracts

“Contracts with owners vary greatly and even in our village there are about seven different contracts. There would be a big advantage if it were at all possible to have a statewide standard.”

Mr Rod Mackenzie¹⁵⁹

4

An important feature of the *Retirement Villages Act 1986* is that it is not prescriptive about services provided by retirement villages. Mr Cohen told the Committee that the Act generally does not define everything that retirement village contracts must include.¹⁶⁰ Rather, the Act is designed to allow villages to decide what they do and do not offer and for these services to be negotiated between residents and operators. There are, however, specific consumer protections contained in the Act regarding financial matters, such as ingoing contributions, service charge increases and the payment of exit entitlements,

The 2014 changes to the *Retirement Villages Act 1986* require retirement village operators to provide contracts in a standard format. This means that while certain information must be provided the contracts themselves are not standard. Although the Committee received some evidence in favour of standardised contracts,¹⁶¹ the majority of evidence supports continuing the current approach.

Mr Steven Smith, a Partner at HWL Ebsworth, told the Committee that he had been involved in developing the 2014 changes. He said that the variety of retirement village models makes implementing standardised contracts problematic. Instead, standard formats were devised to increase the ease with which retirees can compare village options. However, he added: “I am not suggesting it could not still continue to be improved.”¹⁶²

Ms Debbie McClure, Group Sales Manager at Ryman Healthcare, agreed that devising a standard contract is difficult, partly due to the fact that the sector includes both very large and very small villages. Ms McClure, who works in the retirement sector in Victoria and New Zealand, said:

For example, we do not have capital gain in our retirement village units, but our terms and conditions are considered to be very, very fair. When the New Zealand government were considering the *Retirement Villages Act* [NZ] resident groups suggested to the government that they look at our terms and conditions to see what we offer, and our terms and conditions are in a number of areas better than what the Act has actually introduced. But I also appreciate that the operators here in Australia,

¹⁵⁹ Rod MacKenzie, *Submission*, p. 2.

¹⁶⁰ Consumer Affairs Victoria Simon Cohen - Director, *Transcript - 28 September 2016*.

¹⁶¹ For example, Robyn Milership - Applewood Residents Association, *Submission*, and Rod MacKenzie, *Submission*.

¹⁶² Colin Smith, *Submission*.

in Victoria, cannot all adopt the terms and things that we have, because it would not be financially viable for everybody to offer what we do, because there are some very small operators.¹⁶³

Aged Care Gurus' Ms Rachel Lane argued that complexity is a natural corollary of choice. She considered it more important to offer residents choice in what they purchase than making every contract the same. Ms Lane said:

I understand the desire to remove complexity, but I think complexity comes from the fact that people have choices, and I think that of overriding importance is providing choices to retirement village residents rather than pigeonholing everybody ...

I do not know that it would really matter if there were 20 different contracts in a retirement village. As long as each of the 20 residents that were committed to each of those 20 contracts understood that contract and agreed with the terms of the contract, my argument would be: why does it matter? Why would we want to remove choices to both operators and residents around what they pay, how they pay it and when they pay it?¹⁶⁴

Ms Lane further argued that constantly improving the disclosure statements provided to residents would be of greater benefit than legislating standard contracts.

A contrasting view was provided by the Consumer Action Law Centre, which argued for standard contracts. The Centre's Chief Executive Officer, Mr Gerard Brody, said that standard contracts would make it easier for potential residents to compare villages. Mr Brody did not believe that this would reduce the ability of retirement villages, especially smaller ones, to offer unique benefits, saying: "Of course, you will have some variances in contracts and even in the sale of land there are special conditions and so forth, so that there is a further benefit that is offered in a contract, then that could be provided or annexed."¹⁶⁵

The Committee received a small amount of evidence regarding the *Residential Tenancies Act 1997* and residential and caravan parks. Ms Elizabeth White, Chief Executive Officer, Victorian Caravan Park Association said that changes to that Act in 2011 stipulated the type of information that is included in contracts, again being different to a standard contract. It was her view that this standard information model is best.

163 Debbie McClure - Group Sales Manager Ryman Healthcare, *Transcript - 28 September 2016*

164 Rachel Lane - Aged Care Gurus, *Transcript - 29 November 2016*, Mr Geoff Reeve, Pinnacle Living, made a similar point about offering choice.

165 Gerard Brody - CEO Consumer Action Law Centre, *Transcript - 16 November 2016*.

4.4 Legal and financial advice

“People do not understand what they are getting into when they sign up.”

Ms Ronda Held, Chief Executive Officer, Council on the Ageing Victoria¹⁶⁶

The Committee heard that, recent legislative changes notwithstanding, understanding the full legal and financial implications of buying into a retirement village remains challenging. Further, people making a decision at this time in their lives are sometimes faced with declining or unstable health – themselves or a partner – making it particularly difficult for them to fully understand the many clauses contained within a contract.¹⁶⁷

Mr Joseph Nunweek of law firm WESTjustice told the Committee that the majority of people WESTjustice advises signed their contracts prior to 2014. Although the 2014 changes have helped, he added:

... disclosure can be very useful in terms of a one-sheet precis; it can sometimes be undermined by the complexity and the details of the contracts that follow. So you may have, for example, a useful disclosure form but a 50-page non-standard contract that the person then goes into. On the one hand it can lead them to perhaps an assumption that the disclosure involves everything important they need to know and will simply be repeated in the contract, which is not the case; on the other, there may be aspects of that agreement that do actually moderate the effect of those disclosure statements.¹⁶⁸

Clearly, as with any contract residents should seek legal advice before signing a retirement village contract. The Committee heard a range of evidence concerning the rates of legal advice sought by potential residents. For example, Mr Philip said: “I would guess well over 75 per cent — certainly the vast majority — would get some form of legal advice.”¹⁶⁹

Australian Unity’s Mr Robert Putamorsi said “... we would estimate 90 to 95 per cent of our residents would do that, and that is because we do quite strongly encourage it”.¹⁷⁰ Representatives from Stockland and Aveo told the Committee that they too recommend potential residents obtain legal and financial advice.¹⁷¹

However, Ms Shanny Gordon from Housing for the Aged Action Group told the Committee that retirees are more likely to turn to family and friends for information on what living in a village was like “... and legal and financial advice

¹⁶⁶ Ronda Held - Council on the Ageing Victoria, *Transcript - 16 November 2016*.

¹⁶⁷ Geoff Barber - Aged and Disability Services City of Greater Geelong, *Submission*, p. 1.

¹⁶⁸ Joseph Nunweek - WESTjustice, *Transcript - 28 September 2016*.

¹⁶⁹ Andrew Philip - Retirement Communities Australia, *Transcript - 12 October 2016*.

¹⁷⁰ Robert Putamorsi - General Manager Retirement Communities Australian Unity, *Transcript - 16 November 2016*.

¹⁷¹ Stephen Bull - Group Executive and CEO Retirement Living Stockland, *Transcript - 12 October 2016*; Angela Buckley - Retirement Living Communities, *Transcript - 12 October 2016*.

was way, way down the bottom of the list of other categories ...”¹⁷² A 2011 Housing for the Aged Action Group survey of people living in ILUs found that 79 per cent did not seek any advice before signing their contract.¹⁷³

Mr Jim Crawshaw from Beleura Village in Mornington agreed that although many people do obtain legal advice, potential residents may be more influenced by other, more ‘emotional’ factors when making their decision, including their initial attraction to a retirement village. Mr Crawshaw said:

... most people I have spoken to in our village have sought some form of legal advice as to the documents and the conditions that they are signing and have a basic understanding of what is involved. However, it is a fairly emotional move when you are downsizing into a village. You tend to look at the prettiness — how attractive is the villa, how comfortable is the villa, this, that and the other thing — and I think there are a number of people who just gloss over some of the main facts of what they are signing off on. It is only when you really get into village community life that you understand exactly what it is like.¹⁷⁴

Mr Steven Sapountsis, President of the LIV, provided the Committee with similar evidence about residents being influenced by the attractions of a retirement village as much as legal advice. He said:

My own experience, for instance, is the advice that you are giving, no matter how much you have read the contract, is received by your clients at a time when they are particularly stressed and wanting to make an urgent decision about something. The consequences of you telling them about deferred management fees, capital gains sharing et cetera are problems for later on. So no matter how detailed your example might be, ‘In ten years’ time you might be looking at dropping \$200 000 to \$300 000’ — no disrespect to our clients — that does not sink in because it is not an issue for now. Similar considerations apply when you try and detail other things about the management services agreements that you are often asked to sign as well. They are not appreciated until the problem arrives, the same as with some other contracts as well.¹⁷⁵

Mr David Duckworth provided an example of such a situation when he spoke to the Committee. Mr Duckworth explained that he and his wife had sold their house with a 60-day agreement, leaving them under pressure to find a retirement village. They chose one based on the recommendation of friends, a decision which left them very little time in which to obtain legal advice and understand their contract. Mr Duckworth said:

My wife and I wanted to downsize, and we had a cash buyer come along within seven days wanting a 60-day settlement. We tried to buy a unit nearby, but we were unsuccessful. We were getting concerned as Christmas was approaching and we had to find somewhere to live. We had friends who lived at Willow Lodge, and they convinced us to come and have a look. We paid a deposit on 19 December 2012 to purchase a newly built home which was in the final stages of construction.¹⁷⁶

¹⁷² Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*.

¹⁷³ Consumer Action Law Centre, *Submission*, p. 23.

¹⁷⁴ Jim Crawshaw, *Transcript - 5 October 2016*.

¹⁷⁵ Steven Sapountsis - President Law Institute of Victoria, *Transcript - 29 November 2016*.

¹⁷⁶ David Duckworth, *Transcript - 29 November 2016*.

Although it is important for potential residents to obtain legal advice, the Committee heard that:

- Legal advice is not always easy to find¹⁷⁷
- Even when obtained, feedback suggests that many practitioners do not specialise in retirement housing legislation or how to provide advice on contracts.

Asked by the Committee if she and her husband had obtained legal advice before signing their contract Ms Julie Carter said: “We did, but it was useless.”¹⁷⁸

Mr Charles Adams was equally direct in his opinion of legal advice regarding retirement villages, telling the Committee: “It is a total waste of money.”¹⁷⁹

Ms Amanda Storey, Director of Legal Practice at the Consumer Action Law Centre, told the Committee of residents she knows who had spoken to solicitors prior to signing their contracts but had not received advice on deferred management fees, one of the main area of contention for retirees (see Chapter 5).¹⁸⁰

Ms Gordon provided similar evidence, telling the Committee:

Even when I have spoken to people who have sought legal advice, the issue is that there is not enough knowledge and expertise out there about the various retirement housing types. So they might have gone to their general solicitor, and he or she has looked at the contract and said, ‘That looks fine. Nothing to be worried about’. But without understanding the actual regulation and legislation that covers that type of housing, they have not been able to go into the detail of what all of that means to the resident and the impact that it might have down the track.¹⁸¹

Mr Sapountsis told the Committee that only a small number of legal firms in Victoria have a strong understanding of retirement housing contracts. He said:

... there is a group of maybe four or five law firms that act for the providers of residential services who are on top of all the legislation and can get the necessary packs together. So they are in control of that information; they are familiar with all the legislation in there.

On the other side of it, though, when a prospective resident goes into an aged-care facility or a supported residential facility, they might get advice from someone who is not as familiar with the contract as the service provider is.¹⁸²

¹⁷⁷ Housing for the Aged Action Group Inc, *Submission*.

¹⁷⁸ Julie Carter, *Transcript - 19 October 2016*.

¹⁷⁹ Charles Adams, *Transcript - 29 November 2016*.

¹⁸⁰ Amanda Storey - Director of Legal Practice Consumer Action Law Centre, *Transcript - 16 November 2016*, See also: Gerard Brody - CEO Consumer Action Law Centre, *Transcript - 16 November 2016*; Amanda Storey - Director of Legal Practice Consumer Action Law Centre, *Transcript - 16 November 2016*; and Consumer Action Law Centre, *Submission*, for summaries of two disputes.

¹⁸¹ Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*.

¹⁸² Steven Sapountsis - President Law Institute of Victoria, *Transcript - 29 November 2016*.

Other evidence received by the Committee suggests that legal advice should do more than simply state whether a contract is legal or not. Rather the advice should also explain future liabilities, especially financial liabilities.¹⁸³ Indeed, Ms Carol Aino from the LIV identified a need for ‘collaborative professional practice’ that combines legal and financial advice.¹⁸⁴

Ms Lane from Aged Care Gurus agreed that retirement village residents should obtain both legal and financial advice before signing a contract. However, she pointed out that the complex financial arrangements surrounding retirement villages makes sourcing reliable advice very difficult. Ms Lane said:

The issue that we do see a lot of for people going into retirement villages is that it is very difficult for them to identify the right financial adviser, because it is such a complex area, and it is such a niche and it changes all the time. The way in which calculations are performed to calculate the cost of a home care package or to calculate pension entitlement and eligibility for rent assistance — just those very basic rates and thresholds — changes four times a year, and then you have other ad hoc legislative change because retirement villages and land lease communities fall under state-based legislation rather than federal legislation. So it is a lot for professional advisers to keep on top of if it is not something they do every day.¹⁸⁵

Ms Lane argued that legal and financial advisers should be professionally accredited, including a period of practical experience. She said:

From my point of view I think there should be a bar set, whether they are accountants, lawyers, financial advisers or people who want to provide advice, because consumers need to know that the person they are seeking advice from has the relevant education qualifications as well as experience. I think experience needs to be part of the qualification to have a particular designation attached to them, because you learn a lot more from real-life experience. I have been doing this since 2004, and I have learned a lot more from individual residents moving to individual retirement communities than I have from a textbook or any sort of formal education. That would be my view on that.¹⁸⁶

The LIV indicated its willingness to develop a qualification specific to retirement villages. Mr Sapountsis told the Committee that “... there is a need for greater expertise amongst our lawyers. We are happy to put on some more professional development for that.”¹⁸⁷

The Committee also heard that ‘plain English’ should be used in contracts wherever possible. Mr Severino told the Committee:

I think there is always a complexity to a legal agreement, but I think any standard contract should use simple language. Certainly we advocate that. There is a certain format of a contract that flows nicely around entering a village, the ongoing arrangements and the exit. There is a way to structure a contract so that it is better

¹⁸³ Arnold Bates - Victorian Policy Advisory Group Chair National Seniors Australia, *Transcript* - 16 November 2016.

¹⁸⁴ Carol Aino - Elder Law Committee Member Law Institute of Victoria, *Transcript* - 28 September 2016.

¹⁸⁵ Rachel Lane - Aged Care Gurus, *Transcript* - 29 November 2016.

¹⁸⁶ Ibid.

¹⁸⁷ Steven Sapountsis - President Law Institute of Victoria, *Transcript* - 29 November 2016.

understood. Not every layperson is going to be able to read a contract cover to cover and understand it fully, but the more you can allow for that and for it to be better understood, that is certainly the aim, and that is certainly what we would advocate.¹⁸⁸

The Committee notes Ms McClure's evidence that simplifying the language used in Ryman Healthcare's contracts empowered residents to question what they were signing. Ms McClure said:

... do we still need to have Latin in them? When we came to Australia I discussed it with our team, and we wrote a new agreement in plain English. What fascinated me when we started selling our Weary Dunlop village here in Wheelers Hill was the number of questions I then got, and my sales team got, from our potential residents and their families. Do you know what? It was because they could understand the agreement. It was in plain English, and everybody could read it. There are so many agreements that still have Victorian language that nobody has a hope of understanding.¹⁸⁹

Ms McClure advised the Committee that in New Zealand it is compulsory for retirement village residents to obtain legal advice before signing a contract. It was Ms McClure's view that this requirement has raised standards in retirement villages across New Zealand.¹⁹⁰

The Committee believes that knowledge of retirement housing contracts is lacking across the legal sector in Victoria. This would be alleviated by the LIV developing professional accreditation specific to retirement housing.

RECOMMENDATION 4: That the Law Institute of Victoria's Elder Law Committee develop professional accreditation for specialists in retirement housing and also provide training to general practitioners to improve their understanding of this area of law.

4.5 Other concerns

4.5.1 Switch from strata to lease

Another concern regarding retirement village contracts received in evidence to the Committee in this Inquiry was an identified trend away from strata titles to loan-lease titles. Mr Dennis Green, Chairman of the Mercy Place Parkville ILU Residents' Committee, expressed a common view when he said that selling residences as leasehold, as opposed to strata, gives operators too much power compared to non-property owning residents.¹⁹¹ For example, in a retirement village where 30 per cent of residents are strata residents and the remainder are leaseholders the majority may not have voting rights. This may create governance issues.

¹⁸⁸ Clayton Severino - Senior Legal Counsel Stockland, *Transcript - 12 October 2016*.

¹⁸⁹ Debbie McClure - Group Sales Manager Ryman Healthcare, *Transcript - 28 September 2016*.

¹⁹⁰ Ibid.

¹⁹¹ Dennis Green - Chairman, Mercy Place Parkville ILU Residents Committee, *Submission*, p. 227.

However, evidence received from the sector provided a different viewpoint. For example, Mr Tony Randello stated that Lendlease offers standard contracts to residents in leasehold villages, something it cannot do for strata titles. Mr Randello advised the Committee that across Australia Lendlease villages are comprised of roughly 70 per cent leasehold and 30 per cent strata.¹⁹²

Ms Angela Buckley from Aveo told the Committee that Aveo is in the process of changing all of its villages from strata to leasehold, a process she estimates will take 10–15 years. Ms Buckley argued that leasehold villages offer greater certainty to residents, telling the Committee:

Our new contract that we have implemented over the last 18 months is a leasehold contract, so we have moved from strata to leasehold in the majority of our villages nationally, and the reason we have done that is because that creates certainty for our residents. We can tell them what the ingoing is, what the costs are and then what you are going to get when you leave. A leasehold contract allows that flexibility.¹⁹³

The Committee notes that retirement village operators are already required to provide calculations of estimated future deferred payments.

An alternative industry view was provided by Mr Geoff Reeve, Managing Director, Pinnacle Living. He told the Committee that although there are more costs involved in a strata title they offer greater protection to the owner. Mr Reeve said:

When people buy a house in a strata title village you have got to pay GST on that first sale, whereas in a leasehold village you do not. When you transfer the title in strata title, you have got to pay duty on the transfer as well. So there are all these authority impediments to that structure, yet it is by far the best legal protection — humbly — that a resident can have to own the title.¹⁹⁴

Again, the Committee received a small amount of evidence regarding the *Residential Tenancies Act 1997* and caravan parks. For example, Mr Cording observed that with caravan parks “... the park essentially has a monopoly over controlling the value of the dwelling because they control the site underneath, the site lease”.¹⁹⁵

Residents of Retirement Villages Victoria told the Committee:

There is an established trend for the operators of owners corporation (i.e. strata-titled) villages to transition them to loan-lease villages ... Residents who lease their units have no owners corporation vote because the owner of the residence retains the lot owners right to vote, and they have no right to form a Section 36 residents’ committee.¹⁹⁶

192 Tony Randello - Head of Merger and Acquisitions, Lendlease, *Transcript - 26 October 2016*.

193 Angela Buckley - General Manager Operations, Retirement Living Communities, *Transcript - 12 October 2016*.

194 Geoff Reeve - Managing Director Pinnacle Living, *Transcript - 12 October 2016*.

195 Ben Cording - Principal Solicitor, *Transcript - 16 November 2016*.

196 Residents of Retirement Villages Victoria Inc, *Submission*, p. 24.

The Committee holds no view on the relative strengths of strata and leasehold contracts. However, it is concerned that retirement village residents holding a lease do not have a say in the running of their village, in particular with regard to ongoing costs. As such, it believes that all retirement village units should hold the same owners corporation voting rights.

RECOMMENDATION 5: That the Victorian Government investigate measures to ensure that all retirement village units hold the same owners corporation voting rights.

4.5.2 Families' lack understanding

“Families complain about exit fees and the sale process because they don’t understand the retirement village model. And that comes to our point about trying to encourage residents as they are coming in to disclose and discuss with family the contract arrangements that they are going into.”

Ms Nicole Hornsby, Senior Strategic Advisor, Regulatory Policy Lead, Baptcare¹⁹⁷

Throughout this Inquiry, retirement village operators reported that families’ lack of understanding of their parents’ contracts is an ongoing source of conflict for the sector. This is exacerbated by the fact that it is not unusual for family members to view their parents’ retirement village exit fees as an unfair reduction in their inheritance.¹⁹⁸

Ms Mary Goldstein from Baptcare stated:

In the beginning, even when we say, ‘Read the contracts’, that fundamental premise, if you will, I do not think is largely understood within our community enough, and certainly often ... not with families. That is really when we come to it — to say, ‘Oh! What is this?’. Often it was not communicated to their children and others in the early stages.¹⁹⁹

Mr Putamorsi told the Committee that the average length of stay for Australian Unity residents is between 10–12 years. He also said that it is rare for family members to be involved in the initial negotiations. When the exit entitlements are revealed the amount is usually less than what the family members expect, a result of a lack of understanding of the retirement village model. Mr Putamorsi added that these conflicts are “... generally resolved at our head office through discussion and negotiation at that point”.²⁰⁰

¹⁹⁷ Nicole Hornsby - Senior Strategic Advisor Regulatory Policy Lead Baptcare, *Transcript* - 26 October 2016.

¹⁹⁸ Geoff Bowyer - Managing Director Beck Legal Bendigo, *Transcript* - 28 September 2016.

¹⁹⁹ Mary Goldstein - Retirement Living Manager Strathlan Community Baptcare, *Transcript* - 26 October 2016.

²⁰⁰ Robert Putamorsi - General Manager Retirement Communities Australian Unity, *Transcript* - 16 November 2016.

Ms Lane was firmly of the view that the decision to move into a retirement village is solely that of the residents, not the residents' family. She told the Committee:

Older people have the right to make their own decisions, and there is a conflict of interest in children being involved in these decisions, because they do look at the value of the future estate ... I am always telling the lawyers and the financial advisers, 'Our job is to explain the rights, responsibilities and the cost. It's the client's job to weigh the scale on whether they believe that that is a value-for-money transaction'. 'Is it fair? Is it reasonable? Do you want that? For that price and those terms and conditions, do you want that product?'. Everybody else just has to stand back at that point.²⁰¹

Mr Geoff Bowyer from Beck Legal Bendigo provided similar evidence when he told the Committee about his experience working with families and the pressure some residents may feel from their children. Speaking about the advice he provides residents, Mr Bowyer said: "I ask the children at some point in time to leave us alone just to talk about, 'This is not about how much of the inheritance you leave; you've got to make the call upon what's best in your circumstances'."²⁰²

The Committee also heard concern from some residents that the deferred management fee would be a 'financial burden' on families when they die, a belief that shows a lack of understanding of the retirement village model even among residents themselves. (For more on deferred management fees see Chapter 5.)

201 Rachel Lane - Aged Care Gurus, *Transcript - 29 November 2016*.

202 Geoff Bowyer - Managing Director Beck Legal Bendigo, *Transcript - 28 September 2016*.

5

Costs

5.1 Introduction

“It is important for retirees to understand that buying into a retirement village is not the same as a ‘normal’ property purchase. Consumer Affairs Victoria advises retirees to view buying into a retirement village as a lifestyle decision, not as an investment that will make money.”

Consumer Affairs Victoria²⁰³

Buying into a retirement village differs from purchasing a residential or investment property. Retirement village residents purchase a ‘right to reside’ in a village and access services provided by the village.²⁰⁴ As such, buying into a retirement village is not a profit-making exercise and residents need to understand that they may leave the village with less money than when they entered. (As elsewhere in this Report, this chapter concerns mainly retirement villages.)

Mr Graeme Ellis from National Seniors Australia told the Committee about the advice his mother received prior to her moving into a retirement village. Mr Ellis said:

She realised that she would have to go into a retirement village, so we started looking, which was quite an exercise. The upshot was she found a place that was suitable. We got hold of the contract, and she said, ‘What do I do now?’, and I said, ‘You go and see a solicitor’. He went through it and his advice was very clear: ‘If you want an investment, it is a terrible way to spend your money. If you want a lifestyle, it is a reasonable investment based on the contract’.²⁰⁵

Unfortunately, Consumer Action Law Centre says that many retirees enter villages ‘... under the false belief that they are buying a property—rather than a licence to reside in a property’.²⁰⁶ Similarly, Mr Arnold Bates from National Seniors Australia told the Committee: “We have always advised members over the years that this is not an investment; you are renting a lifestyle. But not everybody listens.”²⁰⁷

Retirement villages are different to property investments because of the costs or charges involved. These costs fall in three groups: ingoing; ongoing; and outgoing. (See also Appendix 6 – Rent comparisons.)

²⁰³ Consumer Affairs Victoria *What is a Retirement Village?* (www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages/choosing-a-retirement-village/what-is-a-retirement-village) (Accessed November 2016)

²⁰⁴ WEstjustice, *Submission*, 9, p. 7.

²⁰⁵ Graham Ellis - National Seniors Australia, *Transcript - 16 November 2016*.

²⁰⁶ Consumer Action Law Centre, *Submission*, p. 1.

²⁰⁷ Arnold Bates - Victorian Policy Advisory Group National Seniors Australia, *Transcript - 16 November 2016*.

5.2 Ingoing costs

Residents make an up-front payment when they enter a retirement village. This payment may be:

- Described in the retirement village contract in a number of different ways (ingoing contribution, an interest-free loan, a refundable deposit or the purchase price)
- Refunded in whole or in part on departing the village (see ‘Outgoing costs’ below).

CAV’s website states that the up-front payment is the largest single payment retirees are likely to make and secures their right to occupy the premises. This right, which includes services specified in the contract, is binding on the owner of the retirement village and cannot be taken away from the resident if the village is sold.²⁰⁸

5.3 Ongoing costs

The ongoing costs at a retirement village include:

- Maintenance charges (which generally can only increase at the same rate as the consumer price index [CPI] unless approved by a residents’ committee)
- Special levies
- Personal services fees
- Metered services and insurance costs.²⁰⁹

Ms Angela Buckley from Aveo told the Committee that ongoing charges operate as a cost-recovery system; that is, the operator cannot make a profit on these charges. Ms Buckley was of the view that this puts the onus on village operators to keep ongoing charges to a minimum.²¹⁰

In its submission to this Inquiry, the Property Council of Australia states:

In Victoria, the *Retirement Villages Act* already limits increases in the recurrent maintenance charge to the consumer price index increases (other than due to increases in municipal rates or salaries). Operators are exempt from this requirement if a majority of residents approve the increase. We believe that this provides the resident with certainty as to how the maintenance charge may be increased, and sufficient protection as only a majority resident vote can increase the charge in excess of CPI.²¹¹

²⁰⁸ Consumer Affairs Victoria *Fees and Charges – Living in a Retirement Village* (www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages/fees-and-charges/fees-and-charges-entering-a-retirement-village) (Accessed November 2016)

²⁰⁹ Ibid.

²¹⁰ Angela Buckley - Retirement Living Communities, *Transcript - 12 October 2016*.

²¹¹ Property Council of Australia, *Submission*, p 15.

The Committee notes that it is possible for operators with control of owners corporation committees to increase fees against residents' wishes.

Any increase in ongoing fees is a concern for retirees on a fixed income,²¹² especially in the current low interest rate environment.²¹³ For example, Ms Carolyn Marshall states that her Residents Service and Maintenance Charge accounts for just over one-quarter of her pension.²¹⁴

In evidence to the Committee, Ms Helen Vallack said in relation to the impact of a rise in her monthly fees: "There were a lot of people there on pensions, myself included, and it just was not feasible."²¹⁵

The *Retirement Villages Act 1986* does not detail the specifics of rights and obligations or fees and charges for a village. These elements are instead detailed in individual contracts between the resident and the village.²¹⁶ This includes detailing or providing guidance on the rights and responsibilities of residents and operators in relation to maintenance and repair of property, communal areas and facilities. Both the Act and the *Retirement Villages (Contractual Arrangements) Regulations 2006* expect these to be detailed in individual contracts between residents and operators.²¹⁷ In practice there is often considerable confusion over which repairs residents and operators are responsible for and, by extension, what residents' monthly service fees cover.²¹⁸

According to the LIV, the way in which ongoing fees are determined can be confusing for residents, as the fees are sometimes explained in an 'ambiguous' way in the contract.²¹⁹ Many submissions to this Inquiry make the point that residents are not always clear who funds ongoing maintenance at their village.²²⁰

Mr Tony Randello, Head of Mergers and Acquisitions at Lendlease, confirmed that ongoing fees are problematic for those on a fixed income and are at the root of many disputes in retirement villages. Mr Randello said:

I think we sometimes need to also balance out whether it is a general concern of the demographic, because with pensions being challenged and the age pension being tested, those concerns are coming through the correspondence now more so than before. The maintenance fees and service fees are becoming even more of a problem, because things are getting a lot more expensive than [residents] are used to seeing in the past.²²¹

212 For example, see: Wan Yeng Yee, *Submission*,; Denise Palmer, *Submission*,; and William Nicholas Stephen, *Submission*.

213 William Clancy - Barnsbury Retirement Village Committee, *Submission*.

214 Carolyn Marshall, *Submission*.

215 Helen Vallack, *Transcript - 26 October 2016*.

216 Housing for the Aged Action Group Inc, *Submission*, p. 51; Consumer Affairs Victoria Simon Cohen - Director, *Transcript - 28 September 2016*, pp. 2-3.

217 Housing for the Aged Action Group Inc, *Submission*, p. 57; Justice Connect, *Submission*, pp. 7-8; Housing for the Aged Action Group Inc, *Submission*, p. 50.

218 Consumer Action Law Centre, *Submission, Attachment 1*, p. 17.

219 Law Institute of Victoria, *Submission*, p. 2.

220 For example, Raymond Green, *Submission*.

221 Tony Randello - Lendlease, *Transcript - 26 October 2016*.

(For an example of how Consumer Action Law Centre successfully challenged increased fees at a holiday village, see Appendix 7.)

The Committee believes that clarifying who has responsibility for funding ongoing maintenance at retirement villages would provide clarity to residents.

RECOMMENDATION 6: That the *Retirement Villages Act 1986* and related regulations define whose responsibility it is to pay for repairs and maintenance, both inside units and in the communal areas and facilities. These amendments should further require all works to be undertaken within a reasonable and mutually acceptable timeframe.

5.4 Outgoing costs

Evidence received throughout this Inquiry strongly suggests that outgoing costs are the most controversial and misunderstood component of the retirement village model. These costs are commonly known as deferred management fees or DMFs (see discussion below), although they can also be referred to as departure or exit fees.

At a public hearing in Ballarat, Ms Lesley Mansfield told the Committee:

Exit fees are often enormous and can include such items as – deferred management fee, maintenance reserve fund contribution, general service fee (which goes on for months after departure), unit reinstatement, half of any capital appreciation, all of any capital depreciation, [and] all the owners’ legal fees and termination administration costs, plus car parking fees and, probably, selling costs.²²²

Deferred management fees are one way in which for-profit retirement villages make their profits and not-for-profit villages improve their services or subsidise recurrent charges. They are calculated as a percentage per year of either:

- The exiting resident’s ingoing contribution or purchase price
- The new resident’s ingoing contribution or purchase price.

Deferred management fees are usually calculated up to a capped percentage stated in the contract. For example, if the fee is 2.5 per cent per year up to a maximum of 25 per cent and the resident is there for ten years or longer, the most they will be charged is 25 per cent.²²³ Increasingly, DMFs are ‘forward weighted’; that is, they accrue at a higher rate for the first several years, before the annual rate decreases over time. The Committee heard that this may be a result of residents entering retirement villages at a later age than in the past and not staying as long, perhaps now for as little as five to seven years.²²⁴

²²² Lesley Mansfield, *Submission*.

²²³ Consumer Affairs Victoria *Ongoing Charges When You Leave a Retirement Village* (www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages/leaving-a-retirement-village/ongoing-charges-when-you-leave-a-retirement-village) (Accessed November 2016)

²²⁴ Committee meeting with Ms Vanessa Clarke, Chief Retirement Village Officer, South Australian Office for the Ageing, Adelaide, 13 December 2016, A similar point was made by Charles Adams, *Transcript - 29 November 2016*.

The Committee received several examples of outgoing fees, including DMFs, throughout this Inquiry. For example, in her submission Ms Patricia Elliott states:

When a resident leaves a village or dies, deferred fees are payable on the sale of the unit by the resident and / or the estate to the owner as follows:

- Capital gains share – 50 per cent
- Deferred management fee at 2.5 per cent for each year to a maximum of 30 per cent of sale price
- Capital improvement fee 0.5 per cent of sale price for services rendered by the company re: co-ordinating with cleaners and workmen in carrying out necessary refurbishment or repair works to achieve a maximum sale price. This was not done when I purchased my unit
- Payment of monthly maintenance fees until such time as settlement is effected on the sale of your unit. The average sale time is eight months
- In all, the payment of the additional cost for the “lifestyle component” the monthly fees and all the deferred fees collectively (as outlined above) comprise hundreds of dollars per week which are payable for the services namely the use and enjoyment of the centre and common property plus the management of the village pursuant to the Management Agreement.²²⁵

Another example of a DMF was provided by Mr David Duckworth, a resident at Willow Lodge Village in Bangholme. Mr Duckworth said:

The deferred management fee at Willow Lodge is applied at 4 per cent per year over the first five years, and it is capped at 20 per cent of the sale price. Management were making a good profit on the new dwelling we purchased, and we considered it was double dipping for it to impose a massive fee on the exit sale as well. In our case, on our outlay of \$268 000, this would amount to a massive \$53 600 after five years, if the sale recouped what our original outlay was.²²⁶

(For a case study on how the Consumer Action Law Centre successfully challenged DMFs at Willow Lodge see Appendix 8.)

5.4.1 Ongoing maintenance charges

Another area of contention the Committee received evidence on was that of ongoing maintenance charges when residents leave a village. Strata title owners must pay maintenance charges and owners corporation fees until the retirement village unit is sold, as they remain a member of the owners corporation until then. Non-strata title owners are required to pay maintenance charges only up to six months after leaving the retirement village. During this six-month period the retirement village must stop levying maintenance charges when either:

- The unit is reoccupied

²²⁵ Patricia Elliott, *Submission*, p 1.
For other examples, see: Max Penaluna, *Submission*; Weny Doolan, *Submission*; Brian and Cynthia Meredith, *Submission*; Graeme Anderson, *Submission*; Glenn Birrell, *Submission*; Eric Butcher, *Submission*; Willow Lodge Village Residents Committee, *Submission*; Dorothy Lorraine Bell, *Submission*.

²²⁶ David Duckworth, *Transcript - 29 November 2016*.

- Someone enters into a contract to occupy it.²²⁷

The LIV's Mr Geoff Bowyer spoke of the concern departing residents feel that ongoing charges reduce a resident's savings. Mr Bowyer said:

I have got one situation at the moment where it is ongoing. It could easily result, if some retirement villages are not able to find a buyer, in a two-year ongoing charge of \$254 a week, and you can see how that could rapidly erode whatever is left after the deferred management fee is paid.²²⁸

While noting the problems created by a situation such as this, the Committee believes that as residents have control over the sale of their property such a lengthy delay is unlikely to be a common occurrence. (See also the discussion on refurbishment and reinstatement clauses below.)

5.4.2 Capital gains

The LIV states that the way in which capital gains are calculated for retirement villages varies according to whether the contract provides calculation before or after the DMF has been deducted. This has a large effect on the amount a resident pays on exit yet, according to the LIV, may not be clear in the contract.²²⁹

It was put to the Committee that the DMF model means there is little capital improved value for retirement village units.²³⁰ Some contracts assign all capital gains to the retirement village owner, which is one reason why a resident may leave with less money than when they entered the village.²³¹

Ms Marshall told the Committee that her DMF is calculated on the difference between the ingoing payment and the capital gain, at 5.5 per cent after the first year and an additional 3 per cent for each year after that. Ms Marshall argues that the model is unfair because it does not take into account any capital improvements made by the resident.²³²

²²⁷ Consumer Affairs Victoria *Ongoing Charges When You Leave a Retirement Village* (www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages/leaving-a-retirement-village/ongoing-charges-when-you-leave-a-retirement-village) (Accessed November 2016)

²²⁸ Geoff Bowyer - Managing Director Beck Legal Bendigo, *Transcript - 29 November 2016*.

²²⁹ Law Institute of Victoria, *Submission*, pp. 2-3.

²³⁰ Bob Hayter, et al., *Submission*.

²³¹ Consumer Affairs Victoria *Ongoing Charges When You Leave a Retirement Village* (www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages/leaving-a-retirement-village/ongoing-charges-when-you-leave-a-retirement-village) (Accessed November 2016)

²³² Carolyn Marshall, *Submission*, p. 8.

5.5 Deferred management fees – not well understood

Ms SYMES — Are people regularly shocked and disappointed that they get back less than what they thought they were going to get?

Mr BATES — Absolutely.

Ms SYMES — Why is that?

Mr BATES — They have never thought about it deeply enough.

Arnold Bates - Victorian Policy Advisory Group Chair National Seniors Australia²³³

Retirement village representatives the Committee spoke with stated that deferred management fees serve two purposes: they lower the cost of entry for residents; and they help fund services provided by villages. Mr Andrew Philip, Managing Director, Retirement Communities Australia, provided the following evidence to the Committee at a public hearing in Melbourne:

The deferred payment model that we operate in our industry and have operated for some decades now is all about affordable housing. It is all about providing lower entry costs to residents when they move to a village. The deferred payment method that operates in our industry comprises two components to the price of the unit: you pay some when you move into the village and you pay some when you leave the village, and it is the combination of those two components that makes up the full purchase price of a unit that provides an adequate return for the developer to want to actually do this in the first place. It has been a good method. It has been a good model that has stood the test of time over many decades, and it is all about providing affordable entry-price housing for seniors. So put simply: you pay some on the way in and some on the way out, but you get to use the facilities and services at the village all the way through.²³⁴

When asked how much the DMF lowers entry prices at Australian Unity retirement villages Mr Derek McMillan said its units are priced at around 80 per cent of the median house price for the area in which the village is located.²³⁵

Similarly, Mr Philip stated:

... I guess the thing that is often forgotten is that the full price was not paid up-front. Some people will dispute that. I have got evidence of my own in our own business that that is absolutely the case. The price of a retirement unit is generally lower than the equivalent housing in that same area outside the village, and that is the deferred payment model working.²³⁶

This argument was in fact disputed by several witnesses throughout this Inquiry. For example, Mr Lawrie Robertson from Residents of Retirement Villages Victoria said: “Our calculations suggest that any discount is small because corporate operating expenses and profits consume most of the deferred fee.”²³⁷

²³³ Arnold Bates - Victorian Policy Advisory Group Chair National Seniors Australia, *Transcript - 16 November 2016*.

²³⁴ Andrew Philip - Retirement Communities Australia, *Transcript - 12 October 2016*.

²³⁵ Derek McMillan - CEO Independent and Assisted Living Australian Unity, *Transcript - 16 November 2016*.

²³⁶ Andrew Philip - Retirement Communities Australia, *Transcript - 12 October 2016*.

²³⁷ Lawrie Robertson - Vice President Residents of Retirement Villages Victoria, *Transcript - 16 November 2016*. Also see Residents of Retirement Villages Victoria Inc, *Submission*.

Consumer Action Law Centre also disputed whether DMFs allow retirees a lower entry price when buying into a retirement village, arguing:

DMFs were first used as a mechanism to enable retirees to buy a right to occupy a unit for 20–30 per cent less than the unit’s freehold market value. The owner could make the difference back on the sale of the unit, through the departing retirees’ accrued fee. Since they first appeared approximately 30 years ago, the DMF model has shifted and residents often now pay the full equivalent freehold value of the unit, in addition to the DMF.²³⁸

In Ballarat, Mr Stewart Gull, a Director at Country Club Villages, told the Committee that even when a retirement village unit is sold at the same price as a residential unit the value for the resident is found in the services provided by the village. Mr Gull said:

Importantly, we think that the DMF model — the deferred management model — is the right model. It is the accepted model within the industry, both in charitable and commercial operations, and the reason is clear. It is the choice of a resident whether they wish to buy a unit in Ballarat or Melbourne. If they buy a unit in Ballarat, for example, the price that they will pay for that unit in Ballarat is the same price that they would buy into a retirement village unit, but it is a lifestyle decision that residents make, and they make that decision because a modern village now provides fantastic community facilities. It combines reception, a medical room, a mail room, a theatrette, a library, a billiard room, a craft room, a dance floor area, indoor bowls, lounge rooms, dining rooms, a bar, a kitchen, barbecue facilities, bowling greens, indoor pools, gymnasiums, a workshop and caravan facilities. Now that is what retirees expect, and so they should. That is the choice that they make, that they do not only go there to buy a unit, they go to change their lifestyle.

Often that lifestyle is changed because of health reasons. They do not feel safe in their own homes, they do not feel confident in their homes and they go to villages for friendship. It is a balance between commercial purchasing and lifestyle changes, so the modern village is a much different village to what has been presented in the past. Also a developer has to support the services system for maybe up to ten years, that if you provide those services and management, the residents’ levies do not cover the cost of those services. So a developer has to support the residents’ communities’ budgets, or their fee budgets to maintain those services. If they did not do that, all that would happen is that services would be cut. That is why the DMF system is in place.²³⁹

Regarding caravan parks, Mr James Kelly, Vice President, Victorian Caravan Park Association and Managing Director, Lifestyle Communities, told the Committee that DMFs keeps entry price lower, as well as ensuring that parks are well maintained. He stated that on a recent study tour of the United States he had seen many caravan parks in a poor condition because they are not funded by a DMF model that, he argued, gives park owners a ‘vested interest’ in maintaining their parks.²⁴⁰

238 Consumer Action Law Centre, *Submission*, p. 5.

239 Stewart Gull - Country Club Villages, *Transcript - 19 October 2016*.

240 James Kelly - Vice President Victorian Caravan Park Association, *Transcript - 16 November 2016*.

The Committee does not believe that the DMF model per se is a problem, simply that it forms part of the financial model for retirement villages (and other forms of retirement housing). However, the Committee recognises the concern of many that the DMF model may be open to exploitation by unscrupulous operators. For example, the Committee heard DMFs described as: a ‘greedy grab for money by the owner’;²⁴¹ “a rich financial return for operators”;²⁴² and money taken from “the pockets of those who can least afford it”.²⁴³

It is clear from the evidence received by the Committee that the DMF model is not well understood among retirees or the wider community.

The LIV states in its submission:

As the deferred (or exit) fees are not regulated (outside the disclosure statement), there are many different formulae for calculation, which can be quite unclear and work to the disadvantage of residents. For example, in a retirement village contract, the deferred management fee (usually 30 per cent) can be calculated on the purchase price or the sale price. This can make a significant difference to the amount being paid on exit by the resident, which is not fully appreciated at the time of entering the contract.²⁴⁴

In his submission to this Inquiry, Mr Colin Smith states that DMFs are ‘... the common and consistent concern among residents in retirement living facilities’.²⁴⁵ He adds that the DMF has been explained to him in a variety of ways, including: a return on investment that would not be possible if residences were priced at market rate; a recovery of administration overheads; a direct link to capital appreciation.²⁴⁶

Further, Residents of Retirement Villages Victoria states:

The factsheet now provided to prospective residents does help them understand the fees they commit to on signing a contract and does make comparisons between villages easier. Nevertheless, many new RRVV members still report that they did not understand what they were facing.²⁴⁷

An alternative model to DMFs was suggested by Housing for the Aged Action Group in its submission. It argues that an exit fee of ten per cent of the purchase price, a model it says exists in the United Kingdom, would be reasonable and would also allow departing residents to keep any capital gains that may accrue.²⁴⁸

²⁴¹ Marilyn Ericson, *Submission*, p. 1.

²⁴² Ronda Held - Council on the Ageing Victoria, *Transcript - 16 November 2016*.

²⁴³ David Duckworth, *Transcript - 29 November 2016*.

²⁴⁴ Law Institute of Victoria, *Submission*, pp. 2-3.

²⁴⁵ Colin Smith, *Submission*, p. 3.

²⁴⁶ *Ibid.*

²⁴⁷ Residents of Retirement Villages Victoria Inc, *Submission*, p. 29.

²⁴⁸ Housing for the Aged Action Group Inc, *Submission*.

Adjustments to the DMF model suggested by Consumer Action Law Centre include:

- It should be based on the purchase price, unless the value of property declines in which case it should be based on the sale price
- The percentage should be capped and applied equally over a ten-year period (to avoid ‘front-loaded’ DMFs where residents who leave after only one or two years must pay a large amount)

Residents should be offered the opportunity to pay the DMF when they move in.²⁴⁹

Aged Care Gurus’ Ms Rachel Lane described DMFs as: “... the biggest bone of contention and cause of confusion when it comes to retirement community contracts”. She suggested the situation could be improved by offering residents a choice of ingoing price, with and without a DMF, telling the Committee:

So say to the resident, ‘Okay, your contract for this unit is \$450 000 with a 36 per cent deferred management fee calculated over 12 years, whatever that model is. Alternatively, you can purchase that unit today for \$650 000 and there is no deferred management fee at the end’. It would mean that operators would need to keep track of two prices. They would need to keep track of the original \$450 000 price and the \$650 000 price, but I do not think that that would be overly onerous. So capital gain could still be shared in that scenario. That to me would be a very simple but effective solution in creating a level of transparency around these deferred management fees that I do not think we necessarily have all the time at the moment.²⁵⁰

The same recommendation, to offer ingoing prices both with and without a DMF, was made by Mr Charles Adams.²⁵¹

Other suggestions received by the Committee include:

- DMFs should be calculated on a pro rata basis²⁵²
- All DMFs should be capped (most are)²⁵³
- DMFs should be regulated.²⁵⁴

As noted in Chapter 4, since 2014 retirement village contracts must include estimates of exit fees residents would expect to pay at one, two, five and ten years. This is undoubtedly helpful for retirees planning to enter a village. However, the Committee believes that exiting a village would be made easier for residents if retirement villages provided this information on a more frequent basis.

²⁴⁹ Consumer Action Law Centre, *Submission*.

²⁵⁰ Rachel Lane - Aged Care Gurus, *Transcript - 29 November 2016*.

²⁵¹ Charles Adams, *Transcript - 29 November 2016*.

²⁵² Norman Fetherstonhaugh, *Submission*; Residents of Retirement Villages Victoria Inc, *Submission*. DMFs are usually calculated as a full year model, such that if a resident lives in a unit for five years and one day, the fee is calculated at six years.

²⁵³ Valerie Edwards, *Submission*; Residents of Retirement Villages Victoria Inc, *Submission*.

²⁵⁴ Gerard Brody - CEO Consumer Action Law Centre, *Transcript - 16 November 2016*; Valerie Bell, *Submission*; Ian and Jean Westerland, *Submission*.

While the Committee recognises the widespread acceptance of the deferred management fee model in the marketplace, to improve the understanding, transparency and operation of this model the Committee recommends:

RECOMMENDATION 7: That the Victorian Government require that retirement village operators disclose ingoing prices with and without deferred management fees.

RECOMMENDATION 8: That the Victorian Government require that deferred management fees are applied on a pro rata basis.

RECOMMENDATION 9: That the Victorian Government require that retirement village operators provide every resident with an estimate of their exit fees every financial year.

5.6 Reinstatement / refurbishment

An ongoing source of contention between retirement village residents and operators is the difference between the terms ‘reinstatement’ and ‘refurbishment’.

‘Reinstatement’ refers to the repairs necessary to bring a unit to the same condition as when the resident moved in; ‘refurbishment’ refers to works that improve the unit beyond that level. Although retirement village contracts stipulate what residents must do on departure, evidence received by the Committee suggests that many residents do not fully understand this part of their contract. A view also exists that when residents pay for refurbishment village owners benefit through receiving a percentage of an increased sale price.²⁵⁵

Ms Lane explained that different expectations when departing a village can have large financial repercussions. Ms Lane said:

There tend to be two words that the industry use which sound very similar but have very different connotations. The industry use ‘reinstatement’ and ‘refurbishment’. Reinstatement is what most people think refurbishment is, which is basically put it back the way you found it — so a lick of paint, any damage that you have done repaired and steam cleaning carpets. Refurbishment means bring it up to today’s standard, whatever that standard is. People do not understand that those two words have very, very different connotations ...

... for a prospective resident you are talking about a difference in reinstatement of \$1500 or \$2000, something like that, versus refurbishment, which can easily be \$60 000 by the time you pull out all the carpet and put in a new kitchen and a new bathroom. So it is very different.²⁵⁶

255 Carol Aino - Elder Law Committee Member Law Institute of Victoria, *Transcript - 28 September 2016*; Julie Carter, *Transcript - 19 October 2016*. See also Alan Clark, *Transcript - 19 October 2016*, in which he outlines a dispute with Stockland which resulted in a 22% reduction in a refurbishment charge for his mother’s unit.

256 Rachel Lane - Aged Care Gurus, *Transcript - 29 November 2016*.

Mr Gull advised the Committee that Country Club Villages finds it very difficult to sell units that have not been refurbished:

Ms PATTEN — Some of the evidence and submissions we have received have been very concerned about the cost of this. They would argue that it is actually refurbishing not reinstating and why should an exiting person have to pay for the company to make improvements on that property and therefore get a better value?

Mr GULL — The reason is pretty clear. If you are setting a standard for a retirement village over 100 units or 200 units, the funding system is that there has got to be a sinking fund to protect the outside of the units.

Ms PATTEN — Yes, like any strata management.

Mr GULL — Sometimes there is no consistency on the treatment of the unit over a 15-year period, for example, by a particular resident. Some residents look after their units exceptionally well. Some smoke in their units. Some do not treat their unit as well as they could. They might have started off when a couple was there. Single men sometimes are not as good as the ladies in the units, so there are lots of issues which come up in the refurbishment of that unit. The refurbishment is there to get the value out of the unit. Now, if you do not refurbish that unit and you have got competition with the good unit, the unit will not sell. It will not sell. A developer never makes any money out of the refurbishment ... We are open. Anyone can inspect the books of any of our refurbishments anywhere. The reason is, if you do not refurbish that unit, it will not sell, because they have got competition ... I think it is a simple fact. If you do not want to sell your unit, do not refurbish it. That is the same on any house; you are in a competition market for any property.²⁵⁷

(Regarding Country Club Villages, Ms Robyn Cooper informed the Committee that she was forced to vacate her unit at Hemsley Park Village before it went on the market. Accordingly, Ms Cooper had to move into a rental property for a period of time before learning what her final settlement payment was to be.²⁵⁸)

The Committee received a group of submissions containing examples of contract clauses that allow residents to object to the cost of refurbishment but not to the works carried out. One contract states:

The lessor must then as soon as practicable give to the Lessee a copy of the inspection report referred to in clause 5.6.(a). The Lessee may, within a period of 14 days after receiving the inspection report, object by notice in writing to the Lessor, to the cost (BUT NOT THE CONTENT) of the measures detailed in the inspection report.²⁵⁹

²⁵⁷ Stewart Gull - Country Club Villages, *Transcript - 19 October 2016*.

²⁵⁸ Correspondence 6 December 2016

²⁵⁹ Shirley Ploog, *Submission*; Marlene Atkinson, *Submission*; J Mitchell, *Submission*; Margaret Radford, *Submission*; Gwynne Willie, *Submission*; Alexander Sanford, *Submission*; Val Sanford, *Submission*; Hilary Jones, *Submission*; Bernie Downie, *Submission*; Marie Utre, *Submission*; Janet Allen, *Submission*; Gladys Stone, *Submission*; Barbara Reeves, *Submission*; Dawn Huret, *Submission*; Helms Chandler, *Submission*; Majorie Giles, *Submission*; Margaret McCartin, *Submission*; Ingrid Brendel, *Submission*; Ken and Norma O'Neale, *Submission*; M Everest, *Submission*; Alwyn Chestnut, *Submission*; Jean Algie, *Submission*; Marie Clark, *Submission*; Vivienne Hart, *Submission*; Fredrick Barling, *Submission*; Glenrys Barling, *Submission*; Ron Wiles, *Submission*; Eleanor Robinson, *Submission*. NB. Words in parentheses added by submitters.

The submissions continue:

On all occasions the owner has attempted to get the resident or the estate to pull out and replace the kitchen and all white goods totally, as well as all the bedroom built in wardrobes, the bathroom and floor tiles to be replaced, new shower screen, removal of the bath and to disconnect the floor heating and pay to have new air-conditioning installed. Under no circumstances could this be considered as refurbishment, as the only legal obligation of the outgoing resident is to return the unit as far as practical to its original condition?²⁶⁰

Another condition revealed to the Committee was one where refurbishments are ‘... supposed to be at the owner’s expense, but we have no control or say as to what level the refurbishment needs to be undertaken’.²⁶¹

And Mr Gordon McDonald writes:

The contract notes ten items for which we have responsibility but also contains the words “not limited to”. This means that the sentence is open ended and that the owners can add anything to the list at any time. This has happened. The list is now 21 items in length and contains the words “this list is not exhaustive”. I envisage that this saga can continue with the owners taking no responsibility for the fixtures in our villa.²⁶²

He adds:

Please bear in mind that many residents enter a village with a particular reason and the time can be emotional for many. Even though a resident may have the contract checked by a lawyer they will still only have a scant understanding of the content as many of the lawyers they see have little experience of this type of contract. If a village does satisfy the prime reason for entering then this leads to a lessening of the impact that the words of a solicitor may make.²⁶³

CAV has developed seven ‘good practice protocols’ for retirement village operators. The Committee notes ‘Protocol 7: Refurbishment and reinstatement of units’, which states that if the departing resident does not wish to refurbish their residence then village owners could consider contributing to the refurbishment cost.²⁶⁴ In their submission to this Inquiry, Ian and Jan Westerland suggest this contribution should happen as a matter of course.²⁶⁵

The Committee stresses the importance of retirement village residents agreeing on reinstatement / refurbishment costs with operators before moving in and, if possible, prior to exiting (for example, if residents know when they will be moving into aged care).

²⁶⁰ Ibid.

²⁶¹ Name Withheld, *Submission*.

²⁶² Gordon McDonald, *Submission*, p. 4.

²⁶³ Ibid., p. 4.

²⁶⁴ For CAV’s good practice protocols see: www.consumer.vic.gov.au/businesses/registered-businesses/retirement-village-operators/good-practice-protocols. In his submission to this Inquiry, Mr Dennis Green argues that while these protocols are good they are not always followed or even known about. He recommends either making breaching these protocols an offence or setting up an accreditation system with fines for non-compliance. (Dennis Green - Mercy Place Parkville ILU Residents Committee, *Submission*)

²⁶⁵ Ian and Jean Westerland, *Submission*, A similar argument was made by Mr Alan Dyall (Alan Dyall, *Submission*)

5.7 Differential rates

The issue of differential local government rates for retirement villages featured strongly throughout this Inquiry. The main argument presented to the Committee is that residents should receive a discount on their council rates as they already pay monthly village fees for services charged for by councils, such as garbage collection.

At this point the Committee wishes to express its disappointment in the lack of cooperation offered by a number of local councils the Committee contacted for information on differential rates. In particular, the unwillingness of several councils to attend public hearings or even respond to the Committee to discuss this important issue frustrated the Committee's requirement to address Terms of Reference (5): 'the impact of local government rating on retirement housing'. The Committee hopes that in the future local councils show more awareness of Parliamentary Committees' need to speak with as many stakeholders as possible in order to fully understand issues of importance and make well-informed recommendations to government.

Some local councils in Victoria charge differential rates for agricultural land and properties owned by the not-for-profit sector. In April 2013, the Victorian Government released Ministerial Guidelines for the use of differential rates by Victorian Councils. The Guidelines contained a revised definition of which land categories councils should consider for differential rating, including Retirement Village Land.²⁶⁶

In its submission to this Inquiry, Stockland argues that these guidelines were a positive move that should act as precursor for differential rates being offered to all retirement villages. Stockland writes:

The introduction of the Retirement Village Land rate category as a class of land category to be considered for differential rate purposes was a clear step in the right direction, and acknowledges the reduced demand that residents of retirement villages place on local government services. Residents already pay for on-site services and infrastructure maintenance through their village levies. We encourage the Government to incentivise Councils to apply a differential rate to retirement village residents to remove the unfair financial burden placed on them.²⁶⁷

5.7.1 Why yes

As mentioned, the main argument in support of differential rating for retirement villages is that many villages maintain their own infrastructure. For example, Mr Andrew Preston from Country Club Villages states:

While it is usual for businesses to maintain their own assets, it is not usual for them to maintain such large assets that duplicate those of Council and that benefit the ageing population. Many RVs (like ours) will have kilometres of roads, paths and kerb

²⁶⁶ Bapcare Ltd, *Submission*.

²⁶⁷ Stockland, *Submission*, p. 2.

and channel, a swimming pool, bowling green and community centre and lighting to maintain, while it can be assumed that with any other private development of such a size, the Council would be responsible for the continual maintenance costs of many of these assets.²⁶⁸

In its submission Baptcare writes: ‘... within Baptcare Retirement Villages waste is not collected by council services. In addition all roads, communal lighting and gardens are maintained by Baptcare and residents pay for these services through their maintenance fee.’²⁶⁹

Residents made a similar point to the Committee. For example, Mr Luigi Jacomelli argues that ‘... due to the imposition of full rates by local municipalities, retirement village residents are being charged for the same services in the public sphere. These arrangements are a form of double taxation.’²⁷⁰

Ms Yvonne Stewart informed the Committee that she pays higher rates in her retirement village now than when living in her own home outside the village. Ms Stewart writes: ‘I am quite happy to pay rates as we are all part of a community, but it must be fair.’²⁷¹

Many stakeholders argued that retirement village residents should be offered a discount rate of 25 per cent. For example, in its submission the Property Council of Australia argues:

The Property Council is of the view that a 25 per cent discount differential rate (or rebate) for retirement village residents strikes a fair balance between taxation equity and community obligation. We are currently aware of a number of municipalities which provide a differential of a similar nature and we encourage you to give this rating policy reform serious consideration.²⁷²

5.7.2 Why no

The arguments against differential rating for retirement villages were summarised at a public hearing by the Municipal Association of Victoria (MAV). The Committee thanks the MAV for its evidence and includes the in-depth conversation below, as it reveals the complexity of the issue:

The CHAIR — Just on the issue of differential rates, we have received a lot of submissions about the number of services that are provided within a retirement village. Many of those services are traditionally done by the council — the road maintenance, the rubbish et cetera. So I suppose that is more a cost-per-service type argument. Does the MAV have a position on that argument itself?

²⁶⁸ Country Club Villages, *Submission*, p 2. See also Andrew Preston - Country Club Villages, *Transcript - 19 October 2016* and Stewart Gull - Country Club Villages, *Transcript - 19 October 2016*.

²⁶⁹ Baptcare Ltd, *Submission*, p. 4.

²⁷⁰ Luigi D. Jacomelli, *Submission*, p. 2.

²⁷¹ Yvonne Stewart, *Submission*, p. 1. Similar statements were made by Sheila Hedderick, *Submission*, Kerry Nielson, *Submission*, Joan Lovell, *Submission*, V. de Souza, *Submission*, Dawn and Wayne Renfrey, *Submission*.

²⁷² Property Council of Australia, *Submission*, p 23. Supported by several other stakeholders; for example, see Australian Unity, *Submission*, p. 26.

Mr SPENCE — Well, the way rates work, they are a revenue collection vehicle and they are not service based. For example, if I look at the amount I pay in rates compared to relatively the services I get back, I would not be able to get equal value, in my view. But there are other people in the municipality who need the service who are getting it and I am assisting in it. It works the same as income tax law, company tax and so on.

Mr HARVEY-BEAVIS — I think the view of the MAV is that rates are a tax and as such you would not necessarily expect the hypothecation of contributions to benefits, although it is not uncommon for some councils to view rating equity as having some element of beneficiary pays within it. There are quite a few complexities in understanding beneficiary pays — for instance, access to service is not necessarily the same as not using those services. So effectively you can still have access to those services even if you choose not to use those services. We also need to understand how the cost of providing those services differs by different cohorts within the community as well. So there may be geographic distances that mean that certain services are more expensive for certain groups of ratepayers and not for others. That is probably more common within argument around farming differential rates than retirement villages. Of course there can be questions around lifetime access to services as well, so the bundle of services I would use from my council would be quite different from Rob's, just because we are at different times of our lives. So actually coming up with a clear beneficiary pays model, we are not aware that it has ever been done adequately on a whole of a rating basis.

Mr SPENCE — Yes, across the life cycle of an individual living in a property.

Mr HARVEY-BEAVIS — It would probably be fair to say that a council would not have sufficient tools to be able to actually implement a system even if they were able to come up with such a system ...

Mr MULINO — One other question: I am just thinking here it is a zero-sum game in the short run. Hypothetically if there were efficiencies in some areas of service provision, from certain services being provided — and this might be most likely by very large providers which had multiple facilities, and it does not appear obvious to me that it would be the case but if there were efficiencies — then you might imagine that there could even be arrangements between local government and providers to reduce overall costs over time by some kind of arrangement. I am just wondering if that is an aspect that you have thought about, or are there any areas where you think there are greater efficiencies by providing services?

Mr SPENCE — I do not think we understand it well enough to say yes or no. I mean again it is a really complex question because is a 50-level apartment block the same as a retirement village and do you deal with it in the same way — the services that are all provided internally, car parking underneath et cetera? It is an incredibly complex question. As the Productivity Commission has said, the local government taxing system in Victoria is one of the beauties of the world in that it relates only to the value of the property. It is quite simple, and the right is against the property, so it is a very efficient tax, and in changing that model you would want to be careful, I would say.²⁷³

In its submission to this Inquiry, Mornington Peninsula Shire states that it does not offer differential rates to retirement villages because the services it provides '... are generally available to all residents and ratepayers [and Council will]

²⁷³ Rob Spence - CEO Municipal Association of Victoria, *Transcript - 28 September 2016*, and Owen Harvey-Beavis - Manager Insurance Research and Strategy Municipal Association of Victoria, *Transcript - 28 September 2016*.

equitably fund those services'.²⁷⁴ That is, council rates are not based on a user pays model but on councils providing services to the whole community, whether individuals make use of those services or not.

Ms Rosalyn Franklin, Senior Social Planner at Mornington Peninsula Shire, advised the Committee of the Shire's new waste service charge, introduced in 2016–17, which is intended to apply to all properties equally. Ms Franklin said: "It is recouping the full cost of waste services, which include not just collection and disposal but street sweeping, footpath sweeping and beach cleaning — the Shire has a huge coastal area — the state government's landfill levy and street and draining and collections."²⁷⁵

A similar point was made by Mr James Guy from the City of Ballarat, who said that council rates fund facilities and services that benefit everyone in the community. Mr Guy said that the City of Ballarat encourages:

... people living in [retirement villages] to be out and active in the community, enjoying all the facilities that we provide. Inherently people who visit will always utilise the roads. The overall amenity of Ballarat as a safe and attractive city improves everyone's quality of life and their property values and the attractiveness and all that kind of thing. So we would say that it is a land value issue, not a user-pays issue.²⁷⁶

5.7.3 Examples of differential rates

The Committee learnt that Frankston City Council has provided differential rates to retirement villages for more than 20 years. The Council offers:

- A 25 per cent reduction in rates for retirement villages classified as retirement villages under the *Retirement Villages Act 1986* (30 per cent for one village formerly owned by the Baptist Church)
- The \$218.30 federal rates rebate for pensioners
- A \$50.00 fire levy rebate
- A 50 per cent reduction in rates for Ministry of Housing units.²⁷⁷

Knox City Council advised the Committee that it currently implements a Retirement Village Land rating differential. The differential is discounted by 10 per cent against the general rate (residential land) and applies to all units and properties within a designated retirement village. Knox City's reasoning is that most retirement villages within the municipality engage their own private commercial waste collection and disposal service.

²⁷⁴ Mornington Peninsula Shire Council, *Submission*, p. 10.

²⁷⁵ Rosalyn Franklin - Mornington Peninsula Shire Council, *Transcript - 5 October 2016*.

²⁷⁶ James Guy - City of Ballarat, *Transcript - 19 October 2016*.

²⁷⁷ Personal Communication Frankston City Council, 20 October 2016 and 16 December 2016.

Knox City Council reviews its rating structure annually and at the time of writing this process had commenced in the lead up to Budget 2017/18. Should Knox City resolve to introduce a separate waste collection / garbage charge, the Retirement Village Land rating differential would be abolished, with the separate charge simply not applied to retirement villages.²⁷⁸

The Committee acknowledges both sides of this complex argument, especially the views of retirees on fixed incomes. However, the Committee does not believe that differential rates for retirement villages should be mandated. As mentioned, Ministerial Guidelines define which land categories councils should consider for differential rating, including Retirement Village Land. Local councils are best placed and have the right to determine their own rating policy. Those that believe they are able to offer a differential rate to retirement villages will do so.

5.8 Aged Care Rule

In Victoria, residents leaving a retirement village to go into an aged care facility and who are paying a refundable accommodation deposit (RAD) are entitled to inform the retirement village operator (or the operator's authorised representative) of the:

- RAD amount
- The date the payment is due.

The RAD is not payable to the aged care provider until six months after the resident has left the retirement village and entered the aged care facility. If the retirement village unit does not sell before the RAD is due, the retirement village operator must advance to the resident (free of charge) whichever is less:

- The full exit entitlement; or
- The full amount of the RAD.

Where the RAD is less than the full exit entitlement, this amount is deducted from the exit entitlement when the retirement village unit sells.

Legislation outlines several ways of calculating the exit entitlement amount before a sale price has been agreed on. In commercial retirement villages where residents pay market prices for their units:

- The current value of the right to occupy the unit will be determined by a valuation conducted by a valuer appointed by the President of the Victorian Division of the Australia Property Institute
- The entitlement will be calculated using the value from this valuation
- The departing resident and the retirement village operator share the cost of the valuation in the same proportions as any capital gain are shared.

²⁷⁸ Correspondence Mr Dale Monk, Manager Finance and Property Services, Knox City Council, 21 November 2016, Council also provides a Council Eligible Pensioner Rebate of \$100. This rebate applies to all ratepayers eligible for the State Municipal Eligible Pensioner Rebate and the Fire Services Property Levy Rebate.

Where market price for a retirement village unit is not paid, the departing resident and the retirement village operator can determine the current value of the right to occupy the unit in any way. However, the value cannot be less than the amount originally paid, adjusted according to the CPI.²⁷⁹

Country Club Villages' Mr Preston told the Committee that prior to 2014 aged care bonds were assessed only for people entering low-level care and were based on their assets, while those entering high-level care only had to pay daily fees. However, aged care accommodation is now priced regardless of the level of care.²⁸⁰

Mr Preston informed the Committee of the way in which Country Club Villages determines the amount to be paid to a departing resident. He said:

The repayment amount calculation begins with determining the unit price. Clause 10.1.1(a) of our lease refers to calculation of the fees on a proxy amount determined in accordance with Schedule 3 of the Regulations. To determine the proxy amount the current market value of the resident right (unit) must be determined by an independent valuation obtained from an independent valuer agreed by the parties.

To calculate the amount of DMF we believe it is only reasonable to refer to the applicable determined date and of course the unit price determined by the valuation. As we are obliged to refurbish the unit within six months from the date in which vacant possession is given the main costs to be deducted should be known by the determined date, except for maybe the final advertising costs.²⁸¹

Regarding loan-lease titles, the Property Council of Australia informed the Committee that '... those who have a loan-lease arrangement are still entitled to set the price that the next ingoing resident will pay and appoint the agent who will market the residence'.²⁸² The problem, according to the Property Council, is that leaseholders entering aged care have '... little incentive to sell their dwelling if they have already received all of their exit entitlement'.²⁸³

In a submission, Mr Preston argued that the aged care rule has the potential to cause cash flow problems, especially for smaller operators,²⁸⁴ a situation that Bapcare describes as 'an unfair burden on the operator'.²⁸⁵

Mr Gull added:

In regional Victoria you are dealing with probably maximum prices of up to \$600 000 across the board. In Melbourne you are dealing with units that are \$1 million, \$2 million. That is quite common now around the central areas of Melbourne. You should not have any impost on any person, because that impost — say you have

²⁷⁹ Consumer Affairs Victoria, *Exit entitlements and aged care accommodation payments* m.consumer.vic.gov.au/housing-and-accommodation/retirement-villages/leaving-a-retirement-village/exit-entitlements-and-aged-care-accommodation-payments (Accessed December 2016)

²⁸⁰ Personal correspondence Mr Andrew Preston 18 November 2016.

²⁸¹ Ibid.

²⁸² Personal correspondence Ms Daniella Stutt 8 November 2016.

²⁸³ Property Council of Australia, 2014, *The effect of the Victorian Aged Care Rule on the retirement village sector*, Melbourne, p 5.

²⁸⁴ Country Club Villages, *Submission*.

²⁸⁵ Bapcare Ltd, *Submission*, p. 3.

five people go into this sort of operation and someone has got to come up with \$5 million. That can have an effect on the whole operation of every other resident. The village could go broke. It could go into receivership because of that system. Maybe one is okay, but no-one knows how many numbers are going to come under this sort of legislation. Developers of retirement villages should not be just supporting some system that was never intended to be supported. This legislation was never intended to support any other services other than when the unit was sold.²⁸⁶

In his submission to this Inquiry, Mr Preston recommends that village owners should have the option of paying the daily accommodation payment (DAP) on behalf of residents up until the dwelling is sold, with the final amount paid then deducted from the resident's exit entitlements.²⁸⁷

UnitingCare Harrison made the same recommendation in its submission, arguing: 'As entry into aged care beds when needed can now be made by a payment of a daily accommodation fee, residents have less need for a large lump sum bond amount, as in the past.'²⁸⁸

Ms Mary Goldstein, Baptcare's Retirement Living Manager, provided further evidence to the Committee at a public hearing in Melbourne. She said:

So what we are saying is, for instance, we run a village and we have 38 apartments and six people move out simultaneously to an aged-care facility, the way it sits at the moment is that they would be within their rights to ask the operator to pay out the refund, so you could imagine the liability on the books, if you will, if six people called in at the same time ... So [paying DAP] seems fairer and equitable, and nobody loses. That is what we are proposing — to pay interest only instead of the capital sum.²⁸⁹

Ms Goldstein added that the risk is made greater by the fact that residents have control over the sale of the property. Ms Goldstein said:

The complication in the current situation is that we have to agree on a figure in order for us to come up with the final analysis of what we are going to give you, and let us say that we agree on a figure and we cannot sell it for that and there is a loss, there is no recourse, so there is no opportunity for the owner to have some recourse. So there is a lot of liability on the owner there, and a small operator potentially could be significantly compromised, as I said, from the previous situation of several properties going on the market at the same time.²⁹⁰

The Committee believes it is reasonable to give retirement village operators the option of paying the DAP on behalf of a departing resident until the resident's unit is sold.

RECOMMENDATION 10: That the Victorian Government make provisions to allow retirement village operators to pay either the refundable accommodation deposit (RAD) or daily accommodation payment (DAP) for residents entering aged care until the resident's unit is sold.

²⁸⁶ Stewart Gull - Country Club Villages, *Transcript - 19 October 2016*.

²⁸⁷ Country Club Villages, *Submission*, p. 1.

²⁸⁸ Uniting Care Harrison, *Submission*, p. 2.

²⁸⁹ Mary Goldstein - Retirement Living Manager Strathlan Community Baptcare, *Transcript - 26 October 2016*.

²⁹⁰ *Ibid.*

6 Relationships between management and residents

6.1 Introduction

The role of a manager in the retirement housing sector can be highly challenging. Some of the many skills retirement housing managers must possess include:

- How to work with a wide variety of demographics (e.g. age, financial position, culture)
- Understanding complex and evolving legislation
- Financial expertise
- ‘Practical’ skills for responding to complaints about building or service standards.

Commenting on the quality of management in the retirement housing sector in Victoria is complicated by the fact that some villages and parks are run better than others, while even a professionally operated organisation will occasionally suffer from periods of bad management.

Evidence received by the Committee strongly supports the view that managers in the sector must have professional training and / or accreditation in order to do their job well.²⁹¹ Consumer Action Law Centre points out that there are currently no professional qualifications required of park and village owners and managers.²⁹²

At a public hearing in Ballarat, Ms Lesley Menzies suggested that the retirement housing sector could learn from the way in which the hospitality industry trains its workforce in a variety of skills. She said:

Learn from the hospitality industry, even poach some staff. If you look at the hospitality industry, for example, they are trained in financial, they are trained in how to look after people and how to look after the facilities. They are fully trained people. You could just take them from that area, give them a short course in retirement villages and bang, it is already done.²⁹³

The Committee also heard that, as with all sectors, the ability to train staff in the retirement housing sector is dependent on the size of the business – the bigger the business, the better able it is to train its staff. Ms Debbie McClure from

²⁹¹ For example: Joanne McKnight, *Submission*; George Stephenson, *Submission*; Wilma Hobbs, *Submission*; Dennis Green - Mercy Place Parkville ILU Residents Committee, *Submission*; Geoffrey Douglas, *Submission*; Keith and Betty Greenwood, *Submission*.

²⁹² Consumer Action Law Centre, *Submission*, pp 29-30.

²⁹³ Lesley Menzies, *Transcript - 19 October 2016*.

Ryman Healthcare told the Committee that Ryman Healthcare's size (it operates in Australia and New Zealand) gives it an advantage over smaller operators. Ms McClure said:

We have a really strong induction program for our village managers, and again that is easier for us when we have got 30 retirement villages and a great strength in our office ... But when you are considering these things for the industry, you need to also be considering that there are some very small operators that do not have that advantage of being able to use a strength that we have. I mean, we have leadership programs for our team and mentoring programs. With the size of the company comes the advantage of being able to do those things.²⁹⁴

The Committee was unable to examine management standards in the retirement housing sector in any great detail. However, there is a perception among some residents that management standards need to improve and become more professional. The Committee believes that this need for increased professionalisation will only become stronger as the sector welcomes the next generation of well-educated retirees and their higher expectations (as mentioned in Chapter 1).

Here, the Committee notes Residents of Retirement Villages Victoria's view that mandatory standards would increase the quality of management across the whole sector.²⁹⁵ It also notes the evidence of Mr James Kelly, Managing Director, Lifestyle Communities, who told the Committee that in his experience employing better trained managers results in fewer disputes with residents.²⁹⁶

6.2 Power imbalance

"You feel that it is not a level playing field."

Ms Julie Carter²⁹⁷

According to Ms Sue Williams, a Researcher at the National Ageing Research Institute, research has shown that management training in the retirement housing sector must stress that the needs of residents are as important as the administration or business aims of village and park owners.²⁹⁸

Some residents' views on retirement village management standards are shaped by a strong belief that there is a power imbalance in favour of village owners. This belief was expressed to the Committee in a variety of ways, such as:

- Village costs are set in contracts in such a way as to be paid solely by residents
- Residents are scared to complain for fear of retribution

²⁹⁴ Debbie McClure - Group Sales Manager Ryman Healthcare, *Transcript* - 28 September 2016.

²⁹⁵ Residents of Retirement Villages Victoria Inc, *Submission*.

²⁹⁶ James Kelly - Vice President Victorian Caravan Park Association, *Transcript* - 16 November 2016.

²⁹⁷ Julie Carter, *Transcript* - 19 October 2016.

²⁹⁸ Sue Williams - National Ageing Research Institute, *Transcript* - 26 October 2016.

- Owners have voting rights that are worth more than residents.²⁹⁹

Ms Shanny Gordon from Housing for the Aged Action Group identified a potential source of this perceived imbalance. She told the Committee that for retirement village owners the village is a business, whereas for residents it is their home. Ms Gordon said:

... the thing you have got to remember is that in all of these forms of housing there is an inherent imbalance. You have got an older resident or tenant that sees the place as their home, and that is what they are trying to do: they are trying to create a sense of home. Then you might have an operator that is running a private business that wants to make a profit.³⁰⁰

Other relevant factors include the fact that very few current residents are professionally skilled in financial matters,³⁰¹ while others may not be well off enough to move if they have a dispute with their village. This second point was made clear to the Committee at a public hearing in Melbourne with the following discussion between Committee Member Ms Colleen Hartland and retirement village resident Ms Gwyneth Jones:

Ms HARTLAND — I have just one question and this has come up a few times. Why do people not just leave if they do not like it? Do you have any even rough figures on what it would cost you to leave and re-establish yourself in other accommodation?

Ms JONES — I do not have any figures, but I know that I would not have enough money to go anywhere, so I have no choice except to stay. I could not afford it; as I said, I could buy a tent. That is about it.³⁰²

Consumer Advice Law Centre expressed a fear that a power imbalance in the retirement housing sector may lead to residents being financially exploited by management. It told the Committee that retirement villages in New Zealand must appoint a statutory supervisor licenced under New Zealand's *Financial Markets Supervisors Act 2011*. The role of the statutory supervisor is to ensure that the financial position of the village, the security interests of the residents and the management of the village meet required standards.³⁰³

Mr Geoff Bowyer from Beck Legal Bendigo told the Committee that any power imbalance in favour of owners can be tempered by a strong internal dispute resolution process³⁰⁴ (see discussion on dispute resolution in Chapter 7).

²⁹⁹ See: Graeme and Renee Taylor, *Submission*; Ian Smith, *Submission*; Kithbrooke Park Country Club Residents Committee, *Submission*; Judith Board, *Submission*; Janice Reilly, *Submission*; Residents of Harrison Uniting Care (RHUC), *Submission*.

³⁰⁰ Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*.

³⁰¹ Graham Ellis - National Seniors Australia, *Transcript - 16 November 2016*.

³⁰² Gwyneth Jones, *Transcript - 29 November 2016*, At the hearing Ms Jones told the Committee about a protracted struggle she had had with her retirement village and the great personal toll it had taken on her.

³⁰³ Consumer Action Law Centre, *Submission*, p. 3.

³⁰⁴ Geoff Bowyer - Managing Director Beck Legal Bendigo, *Transcript - 29 November 2016*.

This thought was taken a step further by Ms Angela Buckley, General Manager Operations at Aveo, who in fact did not believe that a power imbalance exists. Ms Buckley told the Committee: “I do not think that residents are frightened or worried about complaining. I can guarantee that, because certainly if I get any letters or anything, from my experience I do not think that they are.”

6.3 Accreditation

Along with training for individual managers, standards can improve through a whole organisation acquiring professional accreditation. UnitingCare Harrison’s Mr Simon Fee told the Committee that in his experience accreditation suits an industry that has responsibility for vulnerable people, such as the retirement housing sector. Mr Fee said:

My experience from working in that sector for 25 years-plus is that accredited sectors generally provide better safeguards for those people that are vulnerable and often not always able to speak for themselves. I think, particularly as there are more and more for-profit operators moving into the space, that it is even more important to have certain standards that everyone needs to abide by.³⁰⁵

The Committee learnt about the Lifemark Village Scheme, an independent accreditation system that provides quality assurance standards for the retirement housing sector. The British Standards Institution (BSI), which is the independent auditor for the Lifemark Village Scheme, established the scheme to enable retirement living providers to assure the quality of their services against 26 industry standards.³⁰⁶

Mr Geoff Reeve, Managing Director at Pinnacle Living, said that the Lifemark Village Scheme provides “... good provisions to have in place in terms of your management structures”. Mr Reeve added that market forces act as another layer of professional standards with ‘word of mouth’ ensuring bad managers do not stay in their positions for any length of time. Mr Reeve said: “We have to provide the product to the residents that they need or else we fail.”³⁰⁷

The Committee heard that other organisations have developed their own professional programs. For example, all Lendlease villages are Lifemark accredited, plus Lendlease has its own employee development program.³⁰⁸

Ms Buckley told the Committee about Aveo’s internal professional development programs, which include a Diploma of Management and a leadership program. Ms Buckley said:

³⁰⁵ Simon Fee - General Manager Housing Services UnitingCare Harrison, *Transcript - 26 October 2016*.

³⁰⁶ See Property Council of Australia, *Submission*, pp 7-10. The Factsheets provided to retirement village residents in Victoria advise residents to ask the following questions: Is the village accredited: under the Lifemark Village Scheme (administered by The British Standards Institution and initiated by the Property Council of Australia)?; by the Australian Retirement Village Association?; under the International Retirement Community Accreditation Scheme (administered by Quality Innovation Performance and initiated by Leading Age Services Australia)?

³⁰⁷ Geoff Reeve - Managing Director Pinnacle Living, *Transcript - 12 October 2016*.

³⁰⁸ Tony Randello - Lendlease, *Transcript - 26 October 2016*.

We have a Diploma of Management that has been actually designed for us with the Hotel School. That is for all village managers and assistant village managers. We also have an annual training program. We provide annual strata and body corporate training for managers who have a strata village. Even though you can train people, there are still things — people are people, they forget things — but we certainly try and keep up that level of knowledge. We have a continuous leadership program for our village managers, with all managers going through a two-day leadership program called *Leading with the Edge*, and we have biannual upskilling sessions.³⁰⁹

Another professional development option for retirement villages is the Property Council of Australia's Village Manager Diploma. The course, delivered via the Property Council of Australia's professional development academy, is designed to allow managers to improve their service to residents and comply with legislation across Australia.³¹⁰

The diploma comprises:

- Introduction to the Retirement Living Industry (e-Learning, 30 minutes)
- Navigating the *Retirement Villages Act 1986* (1/2-day workshop)
- Village Management Advanced (3 days)
- Village Management Electives (choose 3 out of 5, one day each).³¹¹

In its submission to this Inquiry, Consumer Action Law Centre argues for the creation of a Certificate IV qualification under the Australian Qualifications Framework, as well as establishing a register of professionally qualified managers who must maintain their qualification through ongoing professional development. Its submission adds: 'This system could also provide a mechanism to bar managers from the register, if they can be shown to have breached their professional duties in a significant manner.'³¹²

The Committee believes there has been a gradual professionalisation of the retirement village workforce in Australia over recent years. Much as the full impact of recent legislative changes will take some years to be felt (see Chapter 4), the Committee believes that developments such as the Lifemark Village Scheme and the Property Council of Australia's Village Manager Diploma will lead to improvements in the sector over time.

The Committee also believes existing professional development courses can be strengthened, for example to Certificate III or IV level. Some stakeholders the Committee heard from argued that residents should have a say in the appointment of their village manager – for example, Mr Colin Smith said that residents have 'an intimate feel for their village and know what they do and do

³⁰⁹ Angela Buckley - Retirement Living Communities, *Transcript - 12 October 2016*.

³¹⁰ Property Council of Australia, *Submission*, p. 11. See also Andrew Philip - Retirement Communities Australia, *Transcript - 12 October 2016*.

³¹¹ Property Council of Australia Course Handbook 2016.

³¹² Consumer Action Law Centre, *Submission*, p. 25.

not want in their manager'.³¹³ While the Committee does not agree that residents must be included in a village's decision to appoint a manager, it does think involving residents' groups would be one way of strengthening these courses.

Further, the Committee believes that only those villages accredited by schemes akin to the Lifemark Village Scheme should be licensed to operate in Victoria.

RECOMMENDATION 11: That the Victorian Government give consideration to developing a model for mandatory accreditation for all retirement housing providers.

RECOMMENDATION 12: That the Victorian Government ensure that an appropriate minimum Certificate level applies to retirement village management courses.

6.4 Security of tenure

As mentioned in Chapter 1, one of the key issues raised in this Inquiry in relation to caravan and residential parks was that of security of tenure.

The Australian Housing and Urban Research Institute referred the Committee to research showing that minimising the threat of closure or eviction is an important way of improving the quality of life for residents of caravan and residential parks (the others being management standards and parks' facilities).³¹⁴

Further, in its submission to the Victorian Government's review of the *Residential Tenancies Act 1997*, Housing for the Aged Action Group states that in the United Kingdom and Northern Ireland there are only three grounds on which a caravan park tenancy 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
- If the condition of the dwelling is detrimental to the overall amenity of the park.

Housing for the Aged Action Group recommends 30–50 year fixed term leases for caravan and residential park tenants.³¹⁵

Caravan and residential parks fall under the *Residential Tenancies Act 1997*. Chapter 3 observed that this Act is currently under review as part of the Victorian Government's Fairer Safer Housing program. As such, the Committee presents the evidence it received regarding security of tenure and the Act here without comment.

³¹³ Colin Smith, *Submission*, p. 2.

³¹⁴ Australian Housing and Urban Research Institute, *Submission*, pp. 21-23.

³¹⁵ Housing for the Aged Action Group (HAAG), *Security of Tenure Issues Paper: Submission to the Residential Tenancies Act review*, 2016.

Two parts of the *Residential Tenancies Act 1997* are of most relevance to this consideration:

- Part 4 covers residents who lease their dwelling from the park owner
- Part 4A covers residents who own their own caravan or dwelling, and enter into a site agreement with the park, to rent the site on which their home is located.

Much of the evidence the Committee received regarding security of tenure in caravan and residential parks concerned ‘moveable’ or ‘relocatable’ homes. Many residents who live in one of these home do not consider them to be relocatable and expect to live there as long as they remain healthy. That is, they would only move when they chose to.

Ms Aoife Cooke from Housing for the Aged Action Group provided the Committee with information about residents of a caravan park in Bendigo being forced to move due to its closure. In correspondence to the Committee, Ms Cooke said:

The Central City Caravan Park of 362 High Street Bendigo has recently announced closure after the owners of the land did not renew the lease of the caravan park owners. 90 long-term residents are due to leave the park before 29 December 2017. The park is made up of 18 owner-occupied part 4A dwellings; 38 owner-occupied caravans; 15 rental caravans and 19 rental cabins (as well as tourist cabins, powered and camping sites). 80 per cent of these residents are older people.³¹⁶

Ms Cooke provided further information to the Committee about the costs involved in moving a ‘relocatable’ home. She said:

The cost of breaking up, pulling down and removing the units is extremely expensive. One resident was quoted \$25 000 to break it up and an extra \$15 000 to take it to a tip ... for two residents of this park it is their third time each being evicted from caravan parks that are being shut down, and for another two residents it is their second time in this situation.³¹⁷

(Relocatable homes and building standards are discussed further in Chapter 7.)

The Committee is also aware of a recent example of a caravan park in Werribee South which was sold to new owners for redevelopment. Permanent residents received a letter saying they could buy a plot with a new townhouse for between \$295 000 to \$355 000. They could also apply to rent one or be moved to a park in Echuca or Portland. If their site was sold, residents were told they would be given 60 days’ notice to vacate.³¹⁸

Lease and eviction terms vary across parks, with some operators offering leases and others offering no fixed tenure at all. The Committee heard that where caravan and residential parks offer leases they vary from five years to 99 years.³¹⁹

³¹⁶ Personal Communication 15 November 2016.

³¹⁷ Aoife Cooke, *Transcript - 29 November 2016*.

³¹⁸ Beau Donnelly, ‘Retirees fear eviction from rundown caravan park slated for ‘boutique’ living’, *The Age*, 12 December 2016.

³¹⁹ Peninsula Advisory Committee for Elders, *Submission*.

One concern about short-term leases is that residents may not raise any issues for fear of being evicted. However, the Committee also heard that this greater flexibility in leases reflects the more mobile and short-term needs of the majority of caravan park residents e.g. itinerant workers.³²⁰

The *Residential Tenancies Act 1997* lists a number of reasons that a notice to vacate can be issued, such as bad behaviour or destruction of property. The Act also allows for eviction for no specified reason: Part 4 states residents must be given at least 120 days to vacate (314 (3)); Part 4A requires 365 days be provided (317ZF and 317ZG).

Mr Ben Cording from the Tenants Union of Victoria called for the removal of sections 317ZF and 317ZG from the Act. When asked by Committee Chair Mr Edward O'Donohue what effect that removal would have, Mr Cording replied:

... whenever someone is to be kicked out of the park, there would have to be a justification for it. So if I exercise my rights to challenge them on an embedded network charge or a service fee, I would no longer be at threat or risk of them alleging that I had no right to that site. I had a right unless I had done something wrong, or the park has to justify that it is going to change use. So within the caravan park framework, which is part 4, there is a change-of-use provision that says, 'If you're going to do something different, you need to prove that'. So it reverses the onus, and what that does is it preserves the tenancy.³²¹

Westjustice's Mr Joseph Nunweek acknowledged that the *Residential Tenancies Act 1997* includes protections that prevent people being evicted unfairly. However, he argued that the threat of eviction may still be a concern for some older people. Mr Nunweek said:

There are protections in place. While there is a no-reason notice that can be given under the *Residential Tenancies Act* for anyone to leave with 365 days' notice, if that was issued in response to a park resident purporting to exercise a right, it would probably be declared invalid. But it is still a frightening thing for an older person. I mean, if I am to receive a notice to vacate my home tomorrow, I just move on to the next tenancy. I am young enough and I have got a lot of options as to where to go, but I do not have a lot of capital or assets put down in one particular place where I expected to see out my days.³²²

Section 317ZH of the *Residential Tenancies Act 1997* states: 'A notice to vacate under section 317ZF or 317ZG is of no effect if it was given in response to the exercise, or proposed exercise, by the site tenant of a right under this Act or the site agreement.'

320 Victorian Caravan Parks Association, *Submission*.

321 Ben Cording - Principal Solicitor, Tenants Union, *Transcript - 16 November 2016*.

322 Joseph Nunweek - WEStjustice, *Transcript - 28 September 2016*.

The Victorian Caravan Parks Association advises its members to use the no specified reason clauses as a last resort only. Ms Elizabeth White from the Victorian Caravan Parks Association accepted that residents may be concerned by a threat of eviction, but she did not believe that caravan park owners abuse this power:

Ms WHITE — I always counsel the park member that calls me and say, ‘Look, you can issue the first breach notice’ — because you have to go through a series of warnings first — ‘But why not take the breach notice along and say, “I do not want to do this. This is the last recourse. Can we just have a little look at what is happening and how we might fix that?”’. That is the long answer — to say it is the line of last resort, and before that there are quite a few steps that the park can take to try and avoid that.

Ms SYMES — But would you accept that it could be considered by a vulnerable resident as an impediment to them raising concerns with a manager?

Ms WHITE — Look, I imagine that it could in people’s either real or imagined — —

Ms SYMES — Yes, just the perception.

Ms WHITE — I do accept that, I do. I guess what I am asking this group this afternoon to consider is where else, on the other side of it, can a park manager go when they have explored every single avenue and there is not much else left? Our association maintains the view that you need that notice to vacate as a line of last employment when there is nothing else left to go. I take your point that for some people that might seem an implied threat; for us it is just definitely the last thing that is left when it is not working for the rest of the residents.³²³

In its submission to this Inquiry, the Victorian Caravan Parks Association argues that parks do provide security of tenure. Further, they are one of the only places where ‘high-risk’ people can live. Therefore, making eviction more difficult may mean park owners will be less likely to accept such people. The submission states:

There is little statistical evidence to indicate that caravan park owners as landlords fail to provide security and tenure for their tenants ... Should the legislative environment for Part 4 and Part4A tenants become overly restrictive as a result of recommendations arising from this Review, there is a very real threat that caravan park owners might reduce their involvement in the supply of sites for residents in favour of tourists who generally bring a higher return on the sites.³²⁴

Ms White added that caravan park residents access advice and support from organisations such as Consumer Action Law Centre, Housing for the Aged Action Group and the Tenants Union of Victoria. It was Ms White’s view that the vast majority of issues are resolved through mediation before reaching eviction.³²⁵

³²³ Elizabeth White - CEO Victorian Caravan Park Association, *Transcript - 16 November 2016*.

³²⁴ Victorian Caravan Parks Association, *Submission*, p. 17.

³²⁵ Elizabeth White - CEO Victorian Caravan Park Association, *Transcript - 16 November 2016*.

7 Dispute resolution

7.1 Introduction

The majority of people who have chosen to live in retirement housing in Victoria report being satisfied with their decision. This is especially true for retirement villages, with a number of surveys over recent years reporting high customer satisfaction levels. The disputes that do occur in the sector range from complaints about building standards, such as broken fixtures not being repaired fast enough, through to more serious disagreements over contracts and claims of harassment and bullying.

In Victoria, the existing dispute resolution model for retirement villages is comprised of:

- First, the village's internal dispute resolution processes
- If this is not satisfactory, then the dispute can be taken to CAV for conciliation
- If this is not satisfactory, then the dispute can be taken to VCAT for resolution.

Many stakeholders in this Inquiry expressed dissatisfaction with the current dispute resolution model and believed it would be improved with the creation of a Retirement Housing Ombudsman or Advocate. These two options are discussed in detail below.

7.2 Customer satisfaction levels

Evidence the Committee viewed on customer satisfaction levels in the retirement housing sector was mostly positive. For example, the Property Council of Australia referred the Committee to the 'McCrindle Baynes Villages Census Report 2013', which found that:

- 65 per cent of respondents were mostly satisfied that their expectations had been met
- 75 per cent of overall responders and 98 per cent of 'recent purchasers' (i.e. within the preceding two years) were happy with their decision to move into their village and would make the decision again.³²⁶

Australia Unity also believes that the sector is performing well with a high level of customer satisfaction. It pointed the Committee to its Wellbeing Index, which collated data from a four-year survey of several thousand residents aged 65 and

³²⁶ *The McCrindle Baynes Villages Census Report 2013 Executive Summary*, McCrindle, Sydney, 2013. See Appendix 9 for the report's full results.

over. The residents reported levels of overall wellbeing at more than 80 per cent, which Australian Unity states is higher than the general population average for the same age group (that is, 77 per cent).³²⁷

Stockland also surveys its residents, who reported satisfaction with their decision to enter a retirement village. Mr Stephen Bull, Stockland's Chief Executive Officer, told the Committee:

We send surveys out to all 11 000 residents. Unsurprisingly, we get a very good response rate; they like to respond. We get a 60-plus per cent response rate, so we have a fairly good representation of how they feel about a whole range of things. For the last four years we have maintained an average 8½ out of 10 overall satisfaction score from our residents, with 90 per cent of them scoring their satisfaction as 7 out of 10 or higher, and a third of them scoring a perfect 10 out of 10. That said, there are always issues, and we look to address those issues as and when they arise as much as we can.³²⁸

Another retirement village operator, Country Club Villages, reported a high level of satisfaction to the Committee. One of its Directors, Mr Stewart Gull, said: “[Residents] are happy because the lifestyle is what they are looking for.”³²⁹

At a public hearing in Melbourne, Mr Andrew Philip, Managing Director, Retirement Communities Australia, said he believed that the legislative changes introduced in Victoria in 2013 and which came into effect in 2014 improved the sector and resulted in residents being increasingly satisfied.³³⁰ Similarly, Mr Simon Cohen, Director, Consumer Affairs Victoria, told the Committee that complaints concerning retirement villages have declined over recent years, possibly due to the changes referred to by Mr Philip. Mr Cohen said:

... in the last year we have seen fewer complaints than in the year before. One possible explanation for that is that the improvements that were made to contract disclosures in 2014 may be reducing some of the common causes of complaint that we have seen. Perhaps just as a final point, where we can conciliate, we are generally pretty successful. In the last three years between 80 and 95 per cent of the matters that we have sought to conciliate — so about 20 complaints each year — have been resolved. So the sorts of matters that we are actually dealing with, we are able to get some good traction ... These sorts of reforms do not mend things that have happened before; they really look forward and hopefully improve the situation for people into the future.³³¹

See Chapter 4 for a broader discussion on the legislative changes that came into effect in 2014.

³²⁷ Australian Unity, *Submission*, p. 21.

³²⁸ Stephen Bull - Group Executive and CEO Retirement Living Stockland, *Transcript - 12 October 2016*.

³²⁹ Stewart Gull - Country Club Villages, *Transcript - 19 October 2016*.

³³⁰ Andrew Philip - Retirement Communities Australia, *Transcript - 12 October 2016*.

³³¹ Consumer Affairs Victoria Simon Cohen - Director, *Transcript - 28 September 2016*.

Regarding caravan parks, Mr James Kelly, Vice President of the Victorian Caravan Parks Association and Managing Director, Lifestyle Communities said that “... nearly 40 per cent of [Lifestyle Communities’] new sales now come from a customer referring someone. So that says to me that we are probably doing a lot well.”³³²

These positive views were challenged by several witnesses during this Inquiry. Mr Eldred Bishop said that while residents may be happy with most facets of retirement village life, their opinion of management is generally very low. He added: “I suggest you have had dust thrown in your eyes.”³³³ Indeed, Dr Sue Malta, a Research Fellow from the National Ageing Research Institute, told the Committee that data on customer satisfaction needs to be weighed against the fact that some surveys do not capture contractual disputes.³³⁴

Mr Lawrie Robertson from Residents of Retirement Villages Victoria argued that the low number of complaints received by CAV is a result of its “restricted scope”.³³⁵ This view was confirmed by Mr Cohen, who told the Committee: “So I do think there is certainly a limited role that we presently have. I expect that that is reflected in the limited number of complaints that we receive.”³³⁶

The National Ageing Research Institute was recently commissioned by Residents of Retirement Villages Victoria to survey its members, receiving around 2000 responses. Dr Sue Malta spoke with the Committee about the survey’s key findings, saying:

Overall, respondents appeared satisfied with their life and their emotional health, and the majority rated their health as good to very good. For the most part, respondents regarded retirement village life as a generally positive experience and would recommend it to their family, friends or colleagues. Emotional health was also moderately positively correlated with retirement village life, which also fits with what industry tells us.

Whilst most new residents experienced no issues, contractual or otherwise, which needed resolving prior to taking up their residence, over 400 reported issues that were of significance to them, such as delays, building issues, availability of promised facilities and complicated or poorly written contracts. For 170 of these cases the issues were not resolved before moving in and were unlikely to be resolved in the near future.³³⁷

³³² James Kelly - Vice President Victorian Caravan Park Association, *Transcript* - 16 November 2016.

³³³ William Bishop, *Submission*.

³³⁴ Dr Sue Malta - Research Fellow National Ageing Research Institute, *Transcript* - 26 October 2016.

³³⁵ Lawrie Robertson - Vice President Residents of Retirement Villages Victoria, *Transcript* - 16 November 2016.

³³⁶ Consumer Affairs Victoria Simon Cohen - Director, *Transcript* - 28 September 2016.

³³⁷ Dr Sue Malta - Research Fellow National Ageing Research Institute, *Transcript* - 26 October 2016.

7.3 Common complaints and disputes

Mr Cohen explained that the complaints received by CAV concerning retirement villages fall into two main groups: repairs and maintenance issues; and charges and ongoing fees.³³⁸

The Committee also collated a large number of disputes via submissions received during this Inquiry. Two of the larger examples the Committee received are included below. They indicate the role played by advocate groups and law firms in supporting residents in often difficult disputes.

7.3.1 WEstjustice submission

Case Study: Wilfred lives in a residential park which he brought into after attending a retirement lifestyle expo. At the expo, he was told there was a “one time only” opportunity to buy a house on a site at the village at a lower price, and it was suggested to him that if he didn’t buy now prices could rise significantly later on. The belief that he was getting a significant discount that he may not receive elsewhere meant that he paid little attention to his contract or the cooling-off period. Months after moving in, Wilfred was dismayed to discover that new residents were buying dwellings at the park for only marginally more than he had paid – it is likely that the discount wasn’t a discount at all.³³⁹

7.3.2 Consumer Action Law Centre submission

Alleged interference in sale of property: Marie lives alone in a retirement village, and the relationship between her and management has long since broken down. Marie feels bullied and powerless in her village, and feels that she has ‘no rights’. Marie had previously been involved in a VCAT action by residents against management of the village, contesting fee increases. The residents were unsuccessful in that action. Marie described the VCAT experience as stressful and intimidating, and felt that because they did not have lawyers the residents’ concerns had not been taken seriously. As a result, Marie was reluctant to repeat the experience and did not want to lodge a new complaint with VCAT. Marie’s current complaint concerned her attempts to sell her property to leave the village, and her belief that village management had interfered in those attempts. In early November 2015, a potential buyer made enquiries about purchasing property at the village as a result of seeing Marie’s property advertised on a sign outside the village. The potential buyer’s enquiry was fielded by the manager of the village. The manager took the buyer through to the village community room, and when he asked to view Marie’s unit, the manager replied that the unit was very run down and overpriced. The potential buyer did not view the unit at that time. A week or so later, the potential buyer was again inspecting the advertising boards out the front of the village when he was approached by one of the owners of the village.

³³⁸ Simon Cohen - Director, Consumer Affairs Victoria, *Transcript - 28 September 2016*.

³³⁹ WEstjustice, *Submission*, p. 9. Names were changed and identifying factors removed for all case studies in WEstjustice’s Submission.

The potential buyer was accompanied by his daughter on this second occasion. The village owner opted to show the potential buyer and his daughter through another unit at the rear the village. The owner explained that the rear unit was in the final stages of renovation, and was to be sold leasehold. When the potential buyer again requested to see Marie's unit (the advertised property), the village owner discouraged him from doing so, explaining that Marie's unit was run down and overpriced. The potential buyer's daughter later found Marie's unit advertised on realestate.com.au and the potential buyer arranged for an inspection through a real estate agent. On inspection of the property, the potential buyer found that in his view the property was well maintained, modern and appeared to be very good value for money. Based on the potential buyer's version of events (which the potential buyer had related to both Marie and the real estate agent), the village owner and manager may have breached section 32C of the *Retirement Villages Act*.³⁴⁰

7.3.3 Building standards

The Committee observed a widespread concern with building standards across the retirement housing sector.

In particular, the Committee received a great deal of evidence regarding 'moveable' or 'relocatable' homes in caravan and residential parks (which fall under the *Residential Tenancies Act 1997*). It is generally thought that these residences are not, in the common understanding of the word, relocatable. This belief is based on several reasons, including:

- They are built on a concrete slab for engineering reasons (mainly stability)³⁴¹
- Residents frequently build additions such as annexes and decks.³⁴²

Relocatable homes in parks do not require building permits. One argument for maintaining this situation is that the cost of acquiring permits would increase the price of the homes. This would then make them no longer accessible to people on lower incomes, the most common demographic living in such homes.

Mr Tom Jeavons, Deputy Chair of the Peninsula Advisory Committee for Elders, made this argument to the Committee when he said: "One of the issues is that you would not want to bring in a building permit process that would increase the prices of those temporary homes to a higher level because that would negate the availability of those homes to people who maybe cannot afford more expensive homes."³⁴³

The only data the Committee received about the increase in cost that would come from requiring relocatable homes to have a building permit was provided by Mornington Peninsula Shire Council's Mr David Kotsiakos. Mr Kotsiakos, the Council's Municipal Building Surveyor, told the Committee that a building permit would add 1–1.5 per cent to the cost of relocatable homes.³⁴⁴

³⁴⁰ Consumer Action Law Centre, *Submission*, pp. 19–20. The name was changed for this case study.

³⁴¹ Ben Cording - Principal Solicitor, *Transcript - 16 November 2016*.

³⁴² Shanny Gordon - Housing for the Aged Action Group (HAAG), *Transcript - 28 September 2016*.

³⁴³ Tom Jeavons - Deputy Chair Peninsula Advisory Committee for Elders (PACE), *Transcript - 16 November 2016*.

³⁴⁴ David Kotsiakos - Municipal Building Surveyor, Mornington Peninsula Shire Council, *Transcript - 5 October 2016*.

Although relocatable homes do not require a building permit, since 2011 they have had to meet Building Code of Australia standards. Mr James Kelly from the Victorian Caravan Parks Association told the Committee that in his experience the majority of concerns surrounding the quality of relocatable homes relate to housing that pre-dates this requirement.³⁴⁵

For retirement villages, the major challenge faced by operators is building housing adaptable to residents' changing needs as they age. Ms Sue Williams from the National Ageing Research Institute spoke to the Committee about research she has viewed examining how people's expectations evolve while living in retirement villages. Ms Williams told the Committee:

... life circumstances change over time. So [older people] are buying a contract that is, 'This is how I am now, and I will be here until I die. I will be as fit and healthy as I am, and I will die like that', and all of us do not realise the journey that we might be on between those two points. People do not necessarily look at contracts with those different eyes.³⁴⁶

Similar evidence was received about retirees and caravan parks from the Victorian Caravan Park Association Chief Executive Officer, Ms Elizabeth White. She said: "What we find is that people can move into caravan park living as independent livers and then as the years progress they have difficulties."³⁴⁷

An example of how people's physical needs change over time was provided by Mr Max Penaluna. Mr Penaluna moved into his retirement village in 2003 when he was physically stronger. However, he told the Committee: "But now that I am getting a bit older, I am afraid steps and all that sort of thing are way out, including for people that rely on walkers and / or walking frames. How do they negotiate the steps? How do they get access to various locations in the village?"³⁴⁸

The Committee found that, in general, the retirement housing sector responds well to the changing needs of an ageing population. However, it believes that the sector working more closely with disability and aged care design experts would improve residents' safety and, therefore, their quality of life. As an example, one suggestion the Committee received was that planning for new retirement villages should include consideration of the safety needs of mobility scooters users and how the scooters can be charged safely.³⁴⁹

RECOMMENDATION 13: That the retirement housing sector engage more proactively with disability and aged care design professionals when designing villages to facilitate greater choice and an ability for people to age in place.

³⁴⁵ James Kelly - Vice President Victorian Caravan Park Association, *Transcript - 16 November 2016*,

³⁴⁶ Sue Williams - National Ageing Research Institute, *Transcript - 26 October 2016*,

³⁴⁷ Elizabeth White - CEO Victorian Caravan Park Association, *Transcript - 16 November 2016*,

³⁴⁸ Max Penaluna, *Submission*, Professor Yvonne Wells confirmed that a lot of retirement housing "... is not well designed for growing older in" (Professor Yvonne Wells - Professor of Aged Care Research LaTrobe University, *Transcript - 16 November 2016*)

³⁴⁹ Metropolitan Fire and Emergency Services Board, *Submission*, p. 6.

RECOMMENDATION 14: That the Victorian Government require retirement villages to report on compliance with maintenance plans funded by maintenance charges paid by residents.

Other examples of retirement housing complaints and disputes received by the Committee include:

- The quality / transparency of financial statements provided to retirement village residents³⁵⁰
- Concerns over how monthly fees are determined³⁵¹
- ‘Unfair’ contract clauses³⁵²
- ‘Misleading’ information provided by sales staff³⁵³
- Buildings, such as community centres, promised at the point of sale not completed on time.³⁵⁴

The Committee is unable to ‘solve’ all of the issues raised by retirement housing residents throughout this Inquiry. The large number of submissions it received suggests a problem with the current dispute resolution process. The model is discussed below in relation to the relative merits of appointing a Retirement Housing Ombudsman as opposed to a Retirement Housing Advocate.

7.4 Dispute resolution model

Currently, retirement village residents who have a dispute with their operator are advised to use their village’s internal resolution process. Sections 38E–38H of the *Retirement Villages Act 1986* outline the procedures that villages must have in place for when a resident makes a complaint. (For examples of internal dispute resolution processes in retirement villages see Appendix 10.) If residents are not satisfied with the response, they can take their dispute to CAV and then, if necessary, VCAT.

The Committee asked Mr Cohen to explain what powers CAV currently has regarding retirement housing, in particular retirement villages. His response is included in detail below:

The role of Consumer Affairs in respect of retirement villages is limited. What we can do, and where we focus much of our efforts, is provide expert information services to residents and village operators ... In addition to our information role, we receive and, where appropriate, attempt to resolve complaints. There are not many complaints that we receive. Last year we received approximately 40 and in the year before about 60 complaints. There are limits on what we can do with these complaints. We can only offer a conciliation service in limited cases — on average about 20 cases in

³⁵⁰ Justice Connect, *Submission*, p. 7.

³⁵¹ For example: Residents of Harrison Uniting Care (RHUC), *Submission*; Soozah Clark, *Submission*; Rod MacKenzie, *Submission*.

³⁵² For example: Carolyn Marshall, *Submission*; Ian and Jean Westerland, *Submission*,

³⁵³ For example: Graham Blight, *Submission*; Barry and Glenda McKercher, *Submission*; Wilma Hobbs, *Submission*.

³⁵⁴ For example: Gwen Sturrock, *Submission*; Pat Jonas, *Submission*; Rosalie Wilson, *Submission*.

each of the last three years — for reasons including that some disputes are outside of our jurisdiction, such as matters between residents, and that it is not mandatory to conciliate and that parties are not bound to reach an agreed outcome or have one imposed upon them. That said, of the matters where we have been able to conciliate, between 80 to 95 per cent have been resolved. In other cases, though, the only action we can take is to refer the consumer to another organisation, such as the Victorian Civil and Administrative Tribunal.

We are also able to seek compliance in respect of certain legislative requirements under the *Retirement Villages Act*. These primarily relate to matters concerning disclosure obligations, the holding of meetings and the management of complaints. Our compliance approach is a graduated one. We will first educate an operator and encourage compliance. Where this is not successful, other options can be considered. For example, we currently have a matter before the Supreme Court where a retirement village operator has not met their obligation to provide a fact sheet. We have also engaged with a retirement village through our Better Business Initiative. This confidential process allows my staff to provide detailed information about systemic issues raised in complaints and agree on a remediation plan with the operator so as to reduce the cause of complaint ...

We do not have a specialised team within our contact team per se that deal with retirement villages. The way that our contact centre works is that calls are in the first instance dealt with by our general inquiries office staff. They are aided by information on what is called our wiki that has a range of information in relation to the sorts of common inquiries or disputes that we deal with. If it is a matter that is not within their ability to deal with they have a number of seniors who have subject matter expertise across the 30 pieces of legislation that CAV administers, and where required — there are deep policy subject matter experts within Consumer Affairs Victoria that can be accessed — to answer particular questions. So it is more of a graduated approach that applies across our area ...³⁵⁵

Mr Cohen added that CAV has recently implemented a state inspection program. He said:

In 2016–17, there will be a number of retirement villages that we will be visiting as part of that program. But also where we receive complaints about matters, and particularly where we are considering a regulatory response, we will go and attend villages when required to deal with those matters as well. But we do not, separate from that, have a specific program of visiting villages.³⁵⁶

The Committee was also interested in learning what powers CAV does not have. Mr Cohen told the Committee:

It is of note, however, that many of the causes of complaint to Consumer Affairs about matters such as the cost of retirement village fees, repairs and maintenance or poor customer service are not matters of legislation but rather matters of contract or commercial practice. These are not currently amenable to a regulatory response, and indeed, if a party does not agree, nor can they be conciliated by Consumer Affairs. In addition, it is important to acknowledge that there are some cases — thankfully, comparatively uncommon cases — where an operator's financial failure

³⁵⁵ Consumer Affairs Victoria Simon Cohen - Director, *Transcript - 28 September 2016*.

³⁵⁶ *Ibid.*

or inability to complete village facilities impacts significantly on village residents, and where there is no effective remedy currently available. These matters can result in intractable disputes and significant impacts upon residents.

... there are significant limitations on what Consumer Affairs Victoria is able to do. We cannot deal with all complaints, so, for example, if a resident has a dispute with a fellow resident, that is not a matter that we are able to conciliate at all. Nor generally would we be able to deal with a matter where a resident had not sought to resolve it with the retirement village itself in the first instance. Only where both the resident and the retirement village operator agree that we can deal with the complaint through conciliation are we able to even attempt that process, and even if we are able to do that, either party can pull out at any time. They are not required to reach an agreement. If they do not, the only options that we often have are to refer them off to a tribunal or court to have it dealt with.³⁵⁷

Mr Cohen's evidence explains the dissatisfaction expressed to the Committee that CAV's powers are limited and its decisions are not binding. For many retirees who contributed to this Inquiry this makes the model ineffective.³⁵⁸

Mr David Bosci told the Committee about a dispute with his retirement village regarding a perceived difference between verbal advice offered before he signed his contract and the final wording in the contract. According to Mr Bosci, CAV advised that it would be unable to help as it believed conciliation would be unlikely to succeed. CAV recommended Mr Bosci take his case to VCAT.

Mr Bosci then spoke about the cost and work involved in bringing a case to VCAT, telling the Committee:

To take further action [Consumer Affairs Victoria] suggested I would have to prove this pattern of deceptive and misleading conduct. This would obviously require many witnesses. So what I would have to do is, one, pay to lodge a case with VCAT; two, subpoena multiple witnesses and pay their transportation costs up-front; three, cover my own costs; and four, get multiple quotes from suppliers for the replacement cost of the air conditioner. My best estimate was that this would cost me around \$500 up-front. Further, the lawyer advised that it would be treated as a low-priority case by VCAT, as the losses were future losses rather than actual losses already incurred by myself and that there was also a six-year statute of limitations. As the verbal undertakings were made to me over five years previously there was only a limited window remaining in which I could apply.³⁵⁹

Regarding VCAT, the most common complaint received by the Committee was that the process is expensive.³⁶⁰ The process is also said to be time consuming, with Council on the Ageing Victoria arguing that VCAT is used by some in the retirement housing sector as a 'gaming strategy to delay dispute resolution'.³⁶¹

³⁵⁷ Ibid.

³⁵⁸ For example: Janice Reilly, *Submission*; Graeme Taylor, *Submission*; Glenn Birrell, *Submission*; Patricia Chaplin, *Submission*.

³⁵⁹ David Bosci, *Transcript - 19 October 2016*.

³⁶⁰ For example: Judith Board, *Submission*; Raymond Green, *Submission*.

³⁶¹ Council on the Ageing Victoria (COTA Vic), *Submission*, p. 1.

Mr Ben Cording, Principal Solicitor at the Tenants Union of Victoria, provided the Committee with examples of the costs involved in taking a case to VCAT. He argued that the expense inhibits retirees who have a dispute with their operator. Mr Cording said:

If I can turn briefly to VCAT for a moment, with the Supreme Court appeals that I have been involved in, one of the problems with the access to the forum is that if you go through VCAT, it costs you \$61.50; you get the litigation done. But if you win that, and that is a detriment to the park, so you have got 140 units and you win, say, \$1000 or so for everyone, that is \$480 000. Straightaway you can expect the caravan park will go and grab an SC, which has happened to us, you get dragged straight through the Supreme Court and by the time they have filed you are looking at between 20 to 40 grand of liability if they refuse to settle and you think that there is risk. So you have got a cohort that is incredibly vulnerable. The current Appeal Costs Act, which protects people if you win at VCAT, is capped at 50 grand. In most of the appeals that I have been involved in, you can easily blow \$100 000 and, guess what, you are probably going to lose your asset — you are probably going to lose your unit. VCAT does not work, in my opinion, for this strategy or this cohort. One, they are reluctant to participate; and two, even if they do, there is an overbearing pressure on them to not be able to advocate for their rights, because you go straight from VCAT into the Supreme Court costs jurisdiction, and you do not have adequate protection.³⁶²

Ms Marj Barrand told the Committee about an issue involving her mother that took two years and three months to reach VCAT. Further, she was only able to take the case to VCAT because of assistance provided by Consumer Action Law Centre. Ms Barrand said:

My mum is not the only person in the park that has tried to seek justice; however, others have found it too stressful and have had to discontinue for the sake of their health. Mum herself has found it hard to cope with at times and has wondered if it was worth the stresses that she had put on her and the time that it has taken from her quiet enjoyment of life. At 89 years old being cross-examined in a court by the landlords and senior barristers is not something most people half her age have had to endure, and I am really proud of her for doing it.³⁶³

Ms Daisy Ellery spoke of how the time and expense involved in taking a case to VCAT stopped her from taking action over a dispute. Ms Ellery said:

... I went to see a solicitor to go to VCAT. I was going to take my case to VCAT. He told me that I would have to wait six or eight months maybe to get into VCAT and it would probably cost me, if I lose, \$50 000. So I considered my health and wellbeing more important than going to VCAT and decided not to go ...³⁶⁴

³⁶² Ben Cording - Principal Solicitor, *Transcript - 16 November 2016*.

³⁶³ Marj Barrand, *Transcript - 5 October 2016*.

³⁶⁴ Daisy Ellery, *Submission*.

7.5 An ombudsman model

“Of course it goes without saying that people are living longer, and as we live longer we have larger amounts of disability as we age and we are in fact more vulnerable.”

Ms Colleen Pearce, Public Advocate³⁶⁵

Discussion on a new dispute resolution model dominated much of this Inquiry.³⁶⁶ The Committee believes that there is a need in Victoria for a dedicated retirement housing dispute resolution body. This is because of factors discussed above in this chapter, and elsewhere in this report, including:

- Dissatisfaction with the current model
- The fact that some retirees are vulnerable to wrongdoing, either due to ill health / impairment or their stated desire to lead a ‘quiet life’ free of disputes
- Equally, the changing demographics of other more educated retirees, whose rising expectations and increased willingness to challenge operators may lead to a growth in disputes / complaints.

Retirement housing sector representatives told the Committee that residents are well protected by existing legislation, including the internal dispute resolution processes retirement villages are required to have in place. In its submission to this Inquiry, the Property Council of Australia states:

The *Retirement Villages Act* already requires that operators create and maintain a dispute resolution procedure for managing complaints about management, and disputes between residents. This procedure must be disclosed to potential residents and made available to all residents in the village. A resident dispute may also be referred to the resident committee if the resident chooses to do so. The Act therefore already sufficiently provides for internal dispute procedures within villages.³⁶⁷

Contrary views presented to the Committee from residents and related organisations include:

- Fair Go for Pensioners argues that internal dispute resolution processes ‘... can be confusing, stressful, and costly’³⁶⁸
- Ms Jan Hibbert believes that a new body is needed for situations when operators are unwilling to resolve issues with residents or deliberately draw out the process³⁶⁹
- Residents of Retirement Villages Victoria states that current internal dispute resolution processes are not well understood by managers or residents, which creates a need for a free, binding, expert and independent dispute resolution service³⁷⁰

³⁶⁵ Colleen Pearce - Public Advocate, *Transcript - 29 November 2016*.

³⁶⁶ Terms of Reference (4) requires the Committee to investigate: ‘the option to appoint a Retirement Housing Ombudsman’.

³⁶⁷ Property Council of Australia, *Submission*, p. 15.

³⁶⁸ Fair Go for Pensioners, *Submission*, p. 2.

³⁶⁹ Jan Hibbert - Peninsula Grand Retirement Community, *Transcript - 5 October 2016*.

³⁷⁰ Residents of Retirement Villages Victoria Inc, *Submission*.

- Ms Tonye Segbedzi, Senior Policy Officer, Australian Association of Gerontology added that this service must be “cost-effective, fair and fast”.³⁷¹

The Committee agrees with the argument made by the retirement housing sector that legislation in Victoria provides adequate consumer protection for retirees. However, as stated above, the large amount of complaints received throughout this Inquiry suggests many residents do not feel that the current model is adequate when this protection is breached. The message received by the Committee is that there is a need for a Retirement Housing Ombudsman or Advocate.

Mr Geoff Bowyer presented an argument in favour of an ombudsman. Mr Bowyer said:

The Ombudsman is seen as absolutely fearless and independent. I am not saying for a moment that Consumer Affairs is not that, but the Ombudsman is seen as effectively often the champion who does not report back to a government minister per se and is seen by lots of aged people I speak to ... as appearing to have that independence.³⁷²

The Committee was keen to hear the views of the current Victorian Ombudsman, Ms Deborah Glass, in particular her understanding of the ombudsman model and whether it would be suited to the retirement housing sector. In her submission to this Inquiry, Ms Glass wrote: ‘Given the complexities in oversight / regulation of the retirement housing sector already, and the number of bodies involved, any new options should focus on making the system easier to access and easier to navigate when things go wrong.’³⁷³

The Committee also heard from Ms Glass at a public hearing in Melbourne during which she expanded on her thoughts regarding the difference between a publicly funded body and one funded by the industry it oversees. She told the Committee:

... there are some fundamental differences between different types of ombudsmen and complaints handling bodies, including their funding, their governance and whether their decisions are binding. So, for example, my jurisdiction is the public sector, which is obviously publicly funded as is my office. I have no power to enforce my recommendations, but I do have many other powers, including the power to table reports in Parliament, and at the moment the take-up rate of my recommendations is tracking at 100 per cent. Industry ombudsmen, on the other hand, are funded by the industry, set up with arms-length governance arrangements and can make binding decisions on scheme members. Then there is a plethora of other complaint-handling bodies, some of them regulatory bodies in relation to professions such as doctors and lawyers and some are specialist bodies such as those dealing with health, disability and so on. These bodies carry out very important functions, including conciliation and other forms of dispute resolution.³⁷⁴

³⁷¹ Tonye Segbedzi - Senior Policy Officer, Australian Association of Gerontology, *Transcript - 16 November 2016*.

³⁷² Geoff Bowyer - Managing Director Beck Legal Bendigo, *Transcript - 28 September 2016*.

³⁷³ Victorian Ombudsman, *Submission*.

³⁷⁴ Deborah Glass - Victorian Ombudsman, *Transcript - 28 September 2016*.

Ms Glass referred the Committee to the Australian and New Zealand Ombudsman Association's six essential criteria that an ombudsman must comply with: independence; a defined jurisdiction; powers; accessibility; procedural fairness and accountability.³⁷⁵ She added that an industry-funded ombudsman model works best where a small number of large providers deliver essential services, such as currently exists in sectors such as telecommunications and water. She explained:

Otherwise you are looking at more of a government-funded consumer protection model ... If it is to be set up on the industry ombudsman model, which is what I understand many submissions to your Inquiry are suggesting, then there are some real practicalities – and I think it not for me to say – as to whether it is possible to bind all of the providers of what seems to be a sizeable sector.³⁷⁶

In its submission to this Inquiry, Mornington Peninsula Shire argues that if an ombudsman were to be appointed it should also cover retirees living under the *Residential Tenancies Act 1987* '... as there is evidence of intimidation of residents seeking to resolve disputes and taking action to VCAT and there are matters not adequately dealt with by the RTA and VCAT ... and consultation with stakeholders must recognise the often tenuous and vulnerable status of residents.'³⁷⁷

A further argument in favour of a retirement housing ombudsman was made by the Bellarine Lakes Residents' Committee. In its submission it reasons that simply having an ombudsman in place improves standards through its 'moderating influence' on operators.³⁷⁸

A similar view was expressed at a public hearing in Melbourne by Mr Robertson from Residents of Retirement Villages Victoria, who said: "I do not think perfection is of this world, but getting better is a good goal."³⁷⁹

7.6 An advocate model

A complementary dispute resolution model discussed in this Inquiry was that of a Retirement Housing Advocate. Stakeholders who favoured an advocate argued that:

- The low number of complaints and high reported satisfaction levels make an ombudsman unnecessary

³⁷⁵ Australian and New Zealand Ombudsman Association www.anzoa.com.au/ (Accessed December 2016)

³⁷⁶ Deborah Glass - Victorian Ombudsman, *Transcript* - 28 September 2016.

³⁷⁷ Mornington Peninsula Shire Council, *Submission*, p. 9. A similar argument was made by Consumer Action Law Centre, *Submission*.

³⁷⁸ Bellarine Lakes Residents Committee, *Submission*.

³⁷⁹ Lawrie Robertson - Vice President Residents of Retirement Villages Victoria, *Transcript* - 16 November 2016.

- An ombudsman would increase industry costs, which would then be passed on to residents.³⁸⁰

In its submission to this Inquiry, Russell Kennedy Lawyers writes that rather than an ombudsman ‘... we submit that there is a broader role for an independent person to assist consumers and operators in the sector, through training, public education and complaint investigation’.³⁸¹

The dominant view of the retirement housing sector is that such an independent person should be an advocate, as exists in South Australia. Mr Tony Randello, Head of Mergers and Acquisitions at Lendlease, told the Committee:

Lendlease strongly believes in the current dispute resolution options. They are sufficient from our perspective for resident grievances to be addressed. An ombudsman would increase the cost of operations and ultimately impose a further cost burden on residents. It is not a viable solution for the size of the problem. Disputes by consumers in the industry are not sufficiently widespread to warrant the implementation of an ombudsman process. As we have submitted, an advocate similar to the retirement village advocate in South Australia will most effectively address the issues that we believe have been presented and provide an appropriate level of representation for residents.³⁸²

(The Committee travelled to Adelaide and spoke with the South Australian Retirement Village Advocate, Ms Jenny Adams, as part of its Inquiry process. See Appendix 11 for an overview of the South Australian model.)

7.7 Retirement Housing Assistance and Advocacy Program

While writing this report the Committee was advised that the Victorian Government will introduce changes to CAV’s Tenancy and Consumer Program, to take effect 1 July 2017. These changes include the introduction of a separate Retirement Housing Assistance and Advocacy Program (RHAAP). The RHAAP will be funded at \$1.2 million over four years and cover forms of retirement housing that fall under the *Retirement Villages Act 1986* or the *Residential Tenancies Act 1997*. It will be comprised of two components:

- A retirement housing advocacy service, including casework and secondary consultations for tenancy and community workers
- Retirement housing policy.³⁸³

³⁸⁰ See: Victorian Caravan Parks Association, *Submission*; Lendlease, *Submission*; Baptistcare Ltd, *Submission*; Australian Unity, *Submission*; Stockland, *Submission*; Property Council of Australia, *Submission*. Some residents the Committee spoke with had no objections to contributing to the cost of an ombudsman. For example, Mr Colin Smith writes: ‘An Ombudsman office should not require direct funding by the taxpayer but rather be financed via a levy on all managers involved in the industry; and via the incorporation of that levy into their charges, the residents.’ (Colin Smith, *Submission*)

³⁸¹ Russell Kennedy Lawyers, *Submission*, p. 13.

³⁸² Tony Randello - Lendlease, *Transcript - 26 October 2016*.

³⁸³ Correspondence, Hon Marlene Kairouz, Minister for Consumer Affairs, Gaming and Liquor Regulation to Hon Edward O’Donohue, Chair, Legal and Social Affairs Committee, received 31 January 2017.

The Committee acknowledges the positive elements of the new RHAAP, in particular its singular focus on retirement housing residents. However, the Committee notes a gap remains in the form of a body with the power to make binding decisions in disputes between retirement housing residents and management.

The current dispute resolution process is a staged model, beginning with internal dispute resolution processes and progressing up through CAV and VCAT. The Committee believes that a Retirement Housing Ombudsman should be introduced to operate in the space between CAV and VCAT. This model could be in the form of a newly created position or, ideally, created by extending the powers of an existing body, such as the Consumer and Business Ombudsman.

RECOMMENDATION 15: That the Victorian Government introduce a new alternative for low cost, timely and binding resolution of disputes in the retirement housing sector. This may be through a new body or by extending the powers of an existing Ombudsman.

Appendix 1

**Housing options available to
older people in the service
integrated and rental markets**

A1.1 Service integrated housing types

Housing and support service type	Australia	Other countries	
Service integrated housing offering lifestyle and recreation			
Services typically include sporting and recreational facilities and activities, and social activities focused on a club house or community centre.	Lifestyle Village	Active adult retirement community (AARC), or Leisure Oriented Retirement Community (LORC) (US)	
Service integrated housing offering social support			
Support services may include some or all of the following: barrier-free environments, on-site management, general property maintenance, social and recreational activities, group transport, limited supervision including personal alert/emergency call systems, social support.	a. Independent living complex Formal, independent living arrangement designed for older people in a communal environment providing support services.	Independent living units/self-care units Retirement village Residential park Manufactured homes, affordable rental villages	Sheltered Housing (UK) Independent living facility (ILF) Retirement Village (UK and US) Mobile home park (US)
	b. Shared Housing A living arrangement for older people where small numbers of unrelated persons live together in a dwelling unit with a mix of shared and private facilities with the aim of providing a supportive environment.	Abbeyfield housing Agency assisted shared housing (Wesley Mission) Boarding/rooming houses	Abbeyfield housing (UK) Agency assisted shared housing (UK) Cohousing—Europe Single room occupancy hotels (US)
Service integrated housing with support and care			
In addition to 'support services', care services may include property maintenance in response to individual needs, assistance with domestic work (cooking, cleaning, laundry, shopping and household management), individualised transport service, assistance with self-care (bathing, toileting, dressing, grooming, eating, medication), nursing care, allied health services and case management and counselling.	a. Housing with care Housing arrangements that offers support services and a range of care services to frail older people.	Hostels Supported residential service (Vic) Assisted living facility Serviced apartment Flexi-apartment	e.g. Congregate seniors housing (CSH)—US Service-enriched housing—UK e.g. Assisted living facility—US Very sheltered housing—UK Service housing—European countries
	b. Housing with continuing care Services emphasise continuation of care that is adaptive to the changing needs of the older person over the whole period of later life.	Three-tier complexes Continuum of care Ongoing care Apartments for life	Continuing care retirement community (CCRC)—US Life care community—US Retirement community—UK Retirement village—UK (some) Apartments for life— Netherlands

Source: Australian Housing and Urban Research Institute, Submission 764.

A1.2 Rental housing for older people in Australia – types and amenities

Rental tenure type	Assisted living services	Communal amenities
Rental retirement complexes (e.g. ILUs)	Usually limited	Varies (some recreational facilities, maintenance and onsite management)
Assisted living rental villages (e.g. Village Life, Sunnycove)	Meals, laundry cleaning	Common lounge/dining, maintenance, laundry, on site management, some recreational facilities
Small scale communal housing (e.g. Abbeyfield Housing)	Meals, laundry cleaning, supervision	Common lounge, dining, kitchen guest room, laundry, maintenance
Cooperative and community housing	Varies	Varies
Residential parks	No	On-site management, some recreational facilities, laundry
Supported residential services	Personal care and supervision, meals	Common lounge, dining, some recreational facilities and activities

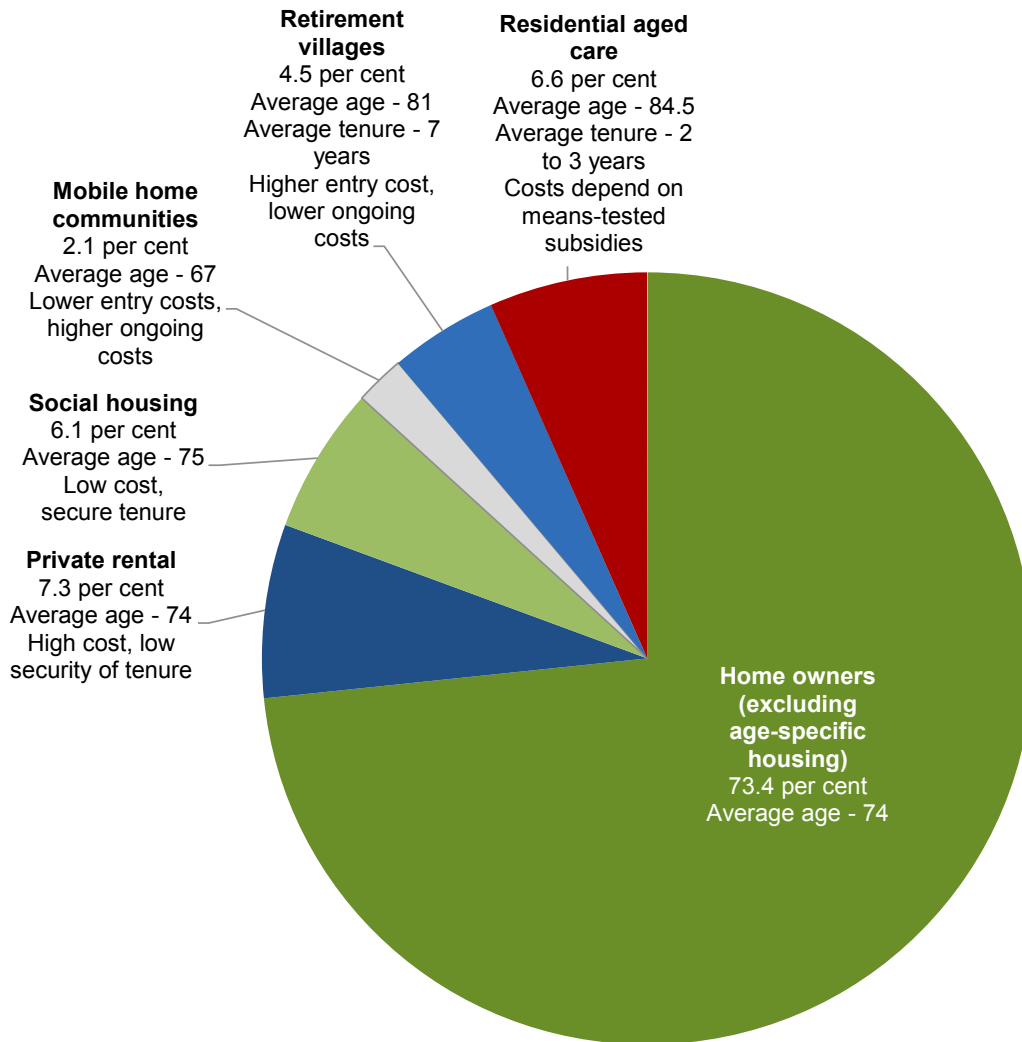
Source: Australian Housing and Urban Research Institute, Submission 764.

Appendix 2

Where older Australians live

Where do older Australians live^{a,b}

Proportion of population over 65 in 2011



^a Due to data limitations, rates for home ownership, private rental and social housing at the individual person level have been imputed by applying population-weighted, household-level home ownership and rental rates from the 2011-12 Survey of Income and Housing to persons enumerated in private dwellings in the 2011 Census, for a given age cohort. ^b Average age and tenure figures refer to 2013-14.

Sources: Productivity Commission estimates based on ABS (*Census of Population and Housing*, 2011, Cat. no. 2037.0.30.001; *Survey of Income and Housing*, Australia, 2011-12 Basic CURF, Cat. no. 6541.0.30.001); Productivity Commission estimates based on HILDA release 13.1, wave 13; AIHW (2015); PwC (2015).

Source: Productivity Commission, *Housing Decisions of Older Australians* – Productivity Commission Research Paper, December 2015, p.86

Appendix 3

Retirement housing models and their related features

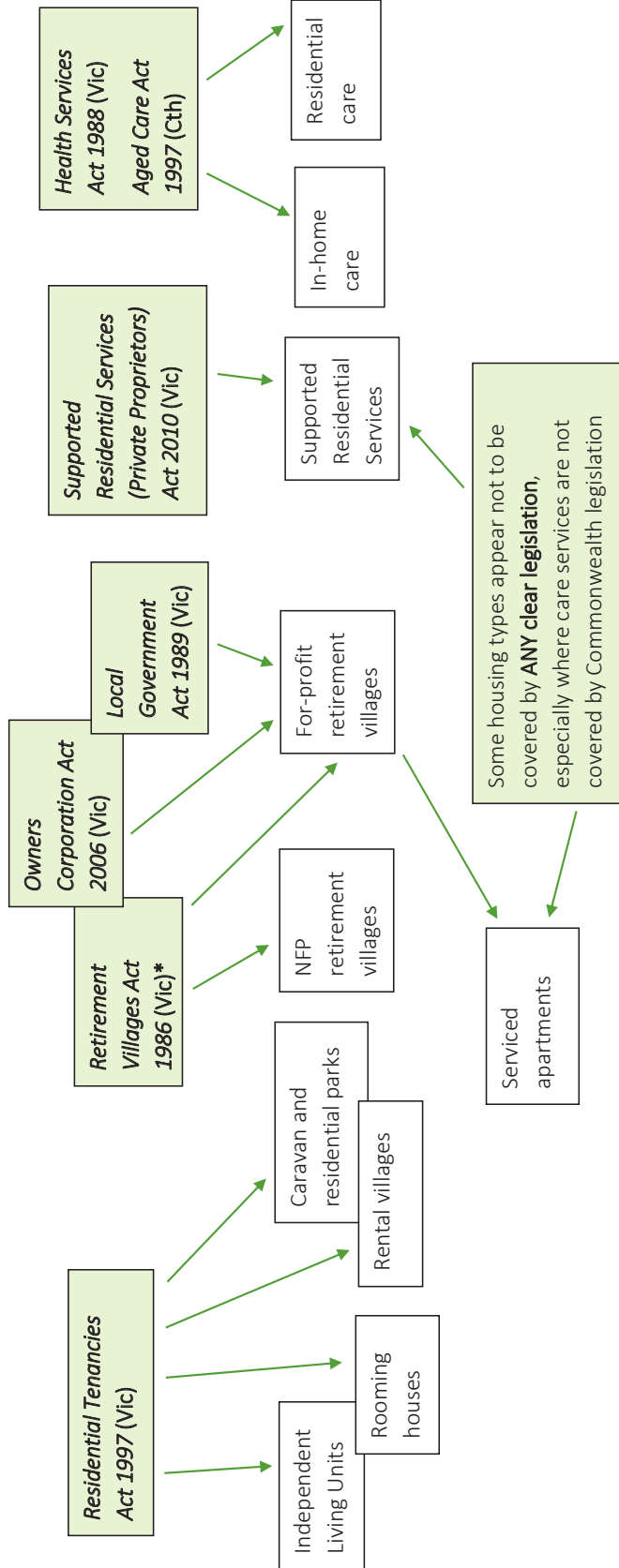
Housing model	Issues identified
For profit retirement villages	<ul style="list-style-type: none"> • Complex contracts and fee structures. • <i>Retirement Villages Act 1986</i> is vague and supports the inequitable financial model retirement villages are built upon. • The <i>Retirement Villages Act 1986</i> relies heavily on contracts to provide most of the rights and obligations of residents and managers. • Legal advice and support are difficult for residents due to both cost and preponderance of industry-favoured law firms with conflicts of interest. • Dispute resolution (including through VCAT) is time consuming and difficult. • Tension between the <i>Retirement Villages Act 1986</i> and <i>Owners Corporation Act 2006</i>.
Independent living units / Not-for-profit retirement villages	<ul style="list-style-type: none"> • Lack security of tenure (when under the <i>Residential Tenancies Act 1997</i>). • <i>Residential Tenancies Act 1997</i> does not address community living. • The <i>Retirement Villages Act 1986</i> relies heavily on contracts to provide most of the rights and obligations of residents and managers. • Legal advice and support are difficult for residents due to both cost and preponderance of industry-favoured law firms with conflicts of interest. • Dispute resolution (including through VCAT) is time consuming and difficult. • Ageing stock which is inappropriately designed for older Victorians. • Lack of management knowledge on legislation and the needs of older people.
Rental villages	<ul style="list-style-type: none"> • Provisions of services such as meals are not regulated under the <i>Residential Tenancies Act 1997</i> or any other specific legislation and therefore the quality and quantity of food are a concern for residents. • Consumer law may provide protection in regard to the provision of goods and services but such general legislation is unlikely to be used by vulnerable residents. • Variations of this model have emerged where legislative coverage is even less clear. For example residents can now be owner occupiers and access a variety of services, such as packages of care, for an associated cost. Care packages appear to be unregulated and unlegislated, and the provision of housing in this scenario no longer fits the tenancy model and seems to lie outside of legislative boundaries.
Caravan and residential parks and villages	<ul style="list-style-type: none"> • The <i>Residential Tenancies Act 1997</i> does not provide adequate security of tenure for residents, which means operators are free to decide the level of security they will provide. Although now provided by some of the larger operators in Victoria, security of tenure is still generally scarce with a lack of consistency across the sector. • Exit fees, such as deferred management fees, and other village features such as communal living, are not addressed by the <i>Residential Tenancies Act 1997</i>. • Planning and building requirements do not properly consider the target population (over 55s), and fee levels do not always reflect pensioners' income affordability. • Residents complain of poor management attitudes and a lack of professionalism. There is currently no standard set for managers, and no training required. • The industry in Victoria is still fairly small in comparison to other states but is steadily growing without proper legislative and regulatory protections for residents.
Semi-supported retirement housing options	<ul style="list-style-type: none"> • Lack of legislative coverage. • It appears that some housing types fall outside of any legislation that imposes duty of care requirements, regulated service provision and adequate staff skills to protect vulnerable residents. • This portion of the retirement housing sector, although generally overlooked, must be considered in the overall policy picture to appreciate the true complexities that exist with retirement housing.

Appendix 4
**Retirement housing legislation
- Victoria**



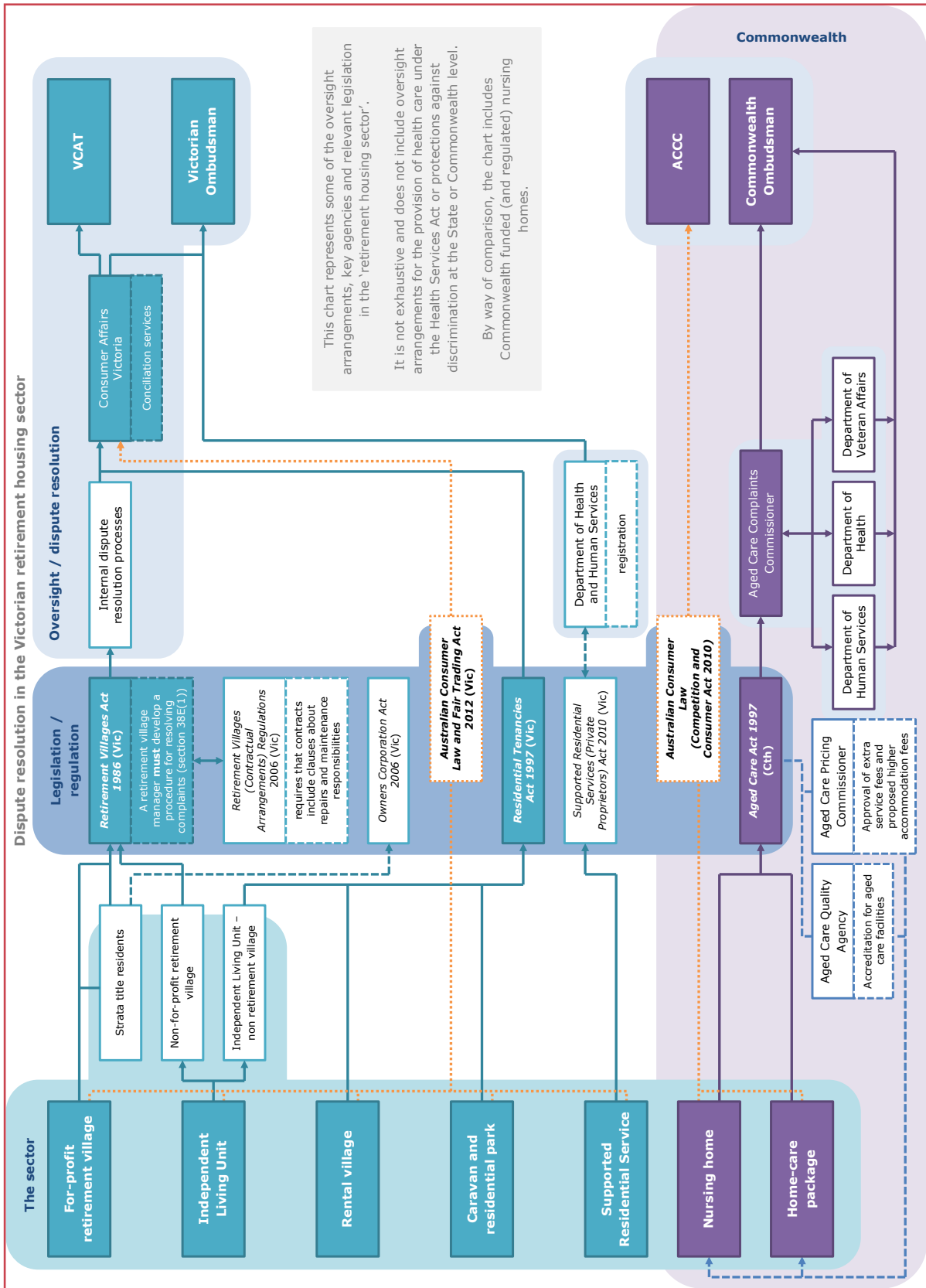
Retirement Housing Legislation - Victoria

Australian Consumer Law and Fair Trading Act 2012 (Vic) and Competition and Consumer Act 2010 (Cth) Schedule 2



* Relevant regulations include Retirement Villages (Contractual Arrangements) Regulations 2006, Retirement Villages (Records and Notices) Regulations 2005 and Estate Agents (Retirement Villages) Regulations 2006.

Appendix 5
**Dispute resolution in the
Victorian retirement housing
sector**



Source: Victorian Ombudsman.

Appendix 6
**Rent comparisons: retirement
villages and other housing**

The Committee heard from several stakeholders regarding the comparative costs of living in a retirement village and other forms of accommodation.

Mr Peter Mair – Submission 758, page 2

Illustrative figures on entry and exit prices for residential rights to a one-bedroom unit comprise an initial entry ‘price’ of some \$450,000, contributed as an interest free loan to the operator, and from which some 3%, being \$13,500 p.a., is forfeited each year to a maximum of 30%, being \$135,000, after 10 years. To this ‘cost’ of \$13,500 p.a. is added some \$6,000 p.a. being the annual cost of a daily levy of some \$20 per day to cover rates and village maintenance expenses.

Importantly also, no provision is usually made for capital gains to accrue to residents although a couple make provision for residents to take or share capital gains – but at the cost of additional exit fees. While prospective capital gain is a bit speculative, a no capital gain provision might be fairly costed at the value of the lost opportunity to invest the \$450,000 at 5% p.a. – some \$22,500.

Taken together, the all up annual cost of buying an entitlement to reside in a one-bedroom village-unit on the usual terms approximates some \$42,000 p.a. – about \$800 per week.

The value of what-you-get does need to be rounded up marginally to reflect the benefits of some shared facilities and emergency care services available to the village community but even so the cost does seem to be grossly excessive, especially given the additional daily levy.

Dr Timothy Kyng – Public hearing, 16 November 2016

Here is a sample of a retirement village contract based on a recent example from Sydney. There is a \$1 million entry fee and recurrent fees of \$560 per month. The DMF is 6 per cent of the entry fee each year for a maximum of five years. There is no sharing of capital gain on exit. Timing of exit may be forced by either death or ill health, or voluntary exit. One of the nasty features of this particular contract is that under the terms of the contract the operator can take three years to pay the person their exit fee, which I think is unconscionable really.

The CHAIR — Is this a real example?

Dr KYNG — Yes, it is. If they cannot sell the unit to another buyer, then they have got up to three years to actually pay — three years after the person has left, possibly because they are either dead or disabled. It is a nasty situation which I believe is just unconscionable.

What do people get for their money? They get the right to reside, and they get the right to receive the various benefit payments down the track. The question is: is it a good deal for residents? To answer this we could compare it to the cost of renting an equivalent apartment somewhere else or the cost of another

retirement village contract or the cost of buying an apartment somewhere. You could argue that there are certain things that should be included or not included in the calculation. I will skip over that point, and we will maybe come back to that later.

So here is my proposal for comparison rent method no. 1. By paying the entry fee, the resident is making an interest-free loan to the operator of \$1 million. Current term deposit interest rates are around 3 per cent. So each year that person is foregoing \$30 000 of interest income that they could be earning. Over a five-year time frame they also have to pay a 6 per cent deferred management fee — 6 per cent of 1 million is 60 000. Three per cent of 1 million is 30 000, and if you add on the recurrent fee, that adds up to \$96 720 per year in equivalent rent, which is really huge. If you look at that over a five-year term, it is \$483 600. By comparison, if you look at the most expensive two-bedroom apartment available in that suburb of Sydney, it is costing \$800 per week to rent. So the equivalent rent for the retirement village is more than double the most expensive two-bedroom apartment in that part of Sydney.

The CHAIR — I suppose the retirement village operator would say there are a whole lot of other benefits that come from being in that environment.

Dr KYNG — That may be true, and it is up to the resident to decide if it is worth paying the extra money. It is for them to decide. It may well be true that it has these extra benefits.

Ms SPRINGLE — So is your point around the transparency of that?

Dr KYNG — Yes. I believe that people should know that, know what it is costing them over the first five years. It is just additional information to help them make the decision. This particular example is of a female aged 82. According to my actuarial calculations, she has got a life expectancy of nine years, according to the most recent Australian life tables. If you take into account the possibility of exit from the village due to ill health or disablement, that reduces the term of residency from nine years to about seven years; the difference being counted for by the fact that if you are unable to live independently, the village operator can force you to leave. So if we work out the total equivalent rent over the 7.1-year expected term of residency, it comes down a little bit to \$79 764 per year, which is still a lot of money, or \$1533 per week, which is compared to \$800 a week for the most expensive two-bedroom apartment. Need I say more?

There are other methods for computing the equivalent rent metric — more complicated and more actuarial. I will not go into the gory details of how the calculations are done, because that would take another couple of hours to go through. But basically what we do is we look at the contract as a combination of insurance-type products. We value each of the insurance products and we compute the component of the entry fee that goes to pay for the right to reside. We convert that to an income stream — an indexed annuity-type income stream.

Here is an example. For this particular contract for a range of different people of different genders and different ages, it shows what the comparison of the rent is. You can see from the figures in the total comparison rent increases as the age

of the resident increases — that is the entry age we are talking about. It is lower for females than it is for males. That is explained by the fact that females live on average for longer than males do.

Another interesting thing about it is if you look at the insurance component — how I have computed the economic value of the insurance they are buying — for the 85-year-old female, two-thirds of the \$1 million is going on buying an insurance product. Approximately one-third is going on buying the right to live there. So I would say that they are paying a lot of money, more than they need to, to buy an insurance product from an organisation which is not licensed to sell insurance and which is not regulated in the way an insurance company would be. In particular it is not regulated with regard to capital adequacy or solvency. Hence, it exposes those residents to risk at the end of the life of their contract when they leave. It exposes the risk that they do not get paid out the amount that is coming to them.

Here is another example, and this illustrates why the information sheet that providers give the customer does not necessarily allow them to make a valid comparison. For a 75-year-old female we can vary the terms of the contract. We can vary the entry fee, we can vary the way the deferred management fee works. If we look at scenario no. 1 — a \$1 million entry fee, 6 per cent deferred management fee and a five-year term — the comparison rent is \$4279. Scenario no. 3 has a much lower entry fee of \$781 000, lower by over 200 000, it has a higher deferred management fee but the same comparison rent. That would not be at all apparent to a consumer from looking at what is on the information sheet. So it does not allow consumers to make these sorts of comparisons.

Appendix 7

**Case study: Dromana Holiday
Village – Consumer Action Law
Centre**

Our client and her lease

Our client is an 89-year-old widow who lives at the Dromana Holiday Village, Dromana, Victoria. She moved there with her late husband in 2007. She purchased a lot with a 99-year lease with a 99-year option to renew and built a two bedroom and two bathroom home on her lot. Our client is a pensioner and pays annual park fees on an interim basis.

The Dromana Holiday Village

The Dromana Holiday Village has approximately 210-220 lots. Some of the leaseholders own their own lots and live there on a permanent basis, other leaseholders rent out their lots to long-term tenants or holiday-goers. The village has a variety of facilities including an indoor and outdoor swimming pool, a BBQ area, a community room and amenity blocks containing a laundry and toilets. The Dromana Holiday Village is not regulated by the *Residential Tenancies Act 1997*, the *Retirement Villages Act 1986* or the *Owners Corporations Act 2006*.

The dispute

The leaseholders' annual liability to pay their park fees is determined pursuant to the "total cost of ownership" (LTCO) clauses in their lease. This clause is opaque and difficult to understand.

The LTCO clause permits the landlord to reasonably determine the total cost of owning and operating the land, any improvements on the land and any services being provided from the land including reasonable allowances for costs, liabilities and expenses that the landlord reasonably expects to incur. The lot holders' annual liability is calculated by multiplying the LTCO by the lot liability allocated to each individual lot, and dividing that figure by the total lot liability.

In 2007, our client's annual fees were \$2,180 per year (\$41.92 per week). These gradually increased each year reaching \$2,697 (\$51.87 per week) in the 2012-2013 financial year.

However, in April 2013, our client's annual fees were increased to \$4,280 per year (\$82.31 per week) for the 2013-2014 financial year – equating to a 63% increase in one financial year. The landlord continued to charge those annual fees for the 2013-2014, 2014-2015 and 2015-2016 financial years. In 2016, the landlord notified the residents that their fees would increase by \$6-\$7 per week for the 2016-2017 financial year, signalling a further 7.3% to 7.9% increase.

No new services or amenities were provided to the residents at the Dromana Holiday Village during the 2013 to 2016 period.

The litigation

On 17 June 2015, our client filed an application in the Victorian Civil and Administrative Tribunal (VCAT) asking that VCAT declare what the LTCO should be for the Dromana Holiday Village for the 2013-2014, 2014-2015 and 2015-2016 financial years.

Our client made four types claims against the landlord.

First, that the annual fees (or LTCO) claimed by the landlord for those financial years included expenses that were unreasonable and/or not properly incurred.

Second, that the landlord had failed to make a determination of the LTCO for the relevant financial years and that the rental increases were not permitted under the terms of the lease.

Third, our client alleged that the landlord had engaged in misleading and deceptive conduct and unconscionable conduct.

Fourth, our client asked VCAT to vary the terms of her lease to make them fairer and more transparent.

On 30 May 2016, VCAT heard our client's application over a 3-day trial. As at the date of filing this submission, VCAT has not handed down its decision in the proceeding.

Resources and access to justice

At its simplest, our client claimed that the annual fees charged by the landlord were too high. The fees had increased by over 60% in one year and there had been no commensurate improvement in the services and amenities at the village.

However, the complexity of the terms of the contract and the adversarial forum of VCAT required our centre to dedicate considerable resources to prepare our client's claim for trial.

These included:

- A junior barrister and/or a senior solicitor appearing at multiple interlocutory disputes, which are set out in further detail below;
- A QC, junior barrister and a senior solicitor to appear at the three-day trial with litigation support provided by graduate lawyers;
- An expert accounting witness preparing an expert report (taking approximately 110 hours to complete), giving evidence and being cross-examined at the trial for approximately five hours;
- Our client and her daughter giving evidence at the trial and being cross-examined by the landlord's senior barrister;

- A senior solicitor and graduate lawyer attending a full day compulsory conference (also known as a mediation); and
- The provision of extensive litigation support including briefs to barristers, briefs to the expert witness, collating and analysing the parties' discovery and preparing court books for trial.

Despite VCAT being less formal than a Court, elderly consumers and their advocates are required to dedicate significant time, expertise and costs to have their claim heard at VCAT.

Most elderly consumers would be unable to access, and pay for, an accounting expert to prepare a 49-page report and to give evidence at a trial. Ombudsman schemes have specialist expertise and consumers are not burdened with the same evidential onus as a Court and Tribunal.

In this case, the parties appeared at multiple interlocutory disputes which were hard fought. These interlocutory disputes included hearings about discovery of documents, applications for leave to file a counterclaim and to split the trial into two trials, and an application by the landlord to adjourn the trial to a later date. These applications were highly technical. An Ombudsman scheme is not hampered by the same civil procedure rules as a Tribunal and Courts. This means that the parties will spend less time arguing about technical issues, and more time resolving the actual dispute. Successive interlocutory applications are resource intensive and there is a strong risk that self-represented elderly consumers would be discouraged from bringing their application to trial.

Finally, an Ombudsman scheme is a more appropriate forum for elderly consumers. Our client and her daughter gave evidence at the trial and were cross-examined by the landlord's barrister. This alone would deter many 89-year-old widows from bringing a complaint against their landlord to VCAT. An Ombudsman scheme would allow elderly consumers to make written submissions, and to appear by telephone conference if required.³⁸⁴

Update – private correspondence Consumer Action Law Centre 22 December 2016

On 9 September 2016, VCAT handed down a 41-page decision in which CALC's client was largely successful. VCAT ordered that the landlord credit the client's account with an amount equal to the overcharged rent for her lot, and made further declarations about the rent charged by the landlord for the park generally.

Following the decision, both parties exchanged correspondence and wrote to VCAT seeking clarification of the true effect of the orders.

³⁸⁴ Consumer Action Law Centre, Submission 749, pp 27-29.

Consumer Action argued that VCAT had held that the rental increase notices for the entire park were invalid for the financial years 1 July 2013 to 30 June 2014, 1 July 2014 to 30 June 2015 and 1 July 2015 to 30 June 2016 (three financial years).

The landlord argued that VCAT had held that the rental increase was invalid for just the period 1 July 2016 to 30 June 2017 (one financial year).

On 31 October 2016, VCAT handed down a subsequent decision clarifying that Consumer Action's interpretation of the orders were correct (and, in fact, extended the effect of the Orders by one further financial year). The effect of those subsequent orders was that the rental increase notices for the four financial years between 1 July 2013 to 30 June 2017 were invalid.

The effect of the orders is that the rent has not been validly increased since 1 July 2013 and that the landlord has therefore overcharged the residents by approximately \$1,343,928.39 for the period of 1 July 2013 to 30 June 2017.

On 11 November 2016, Consumer Action wrote to the lawyers for the landlord and demanded that the landlord credit \$4,149.79 to its client's account in accordance with the orders.

On 21 November 2016, Consumer Action filed an application that the landlord pay the client's legal costs. The application was listed to be heard on 9 January 2017, but it was expected to be adjourned by consent because of the availability of the barristers.

On 30 November 2016, the landlord sent a letter to the leaseholders of the Dromana Holiday Village stating that the landlord had resolved to review the determinations for the rental payable for the four financial years which may result in a net increase or decrease in the rent for the residents over that period.

On 1 December 2016, Consumer Action filed an urgent application seeking further orders, undertakings and conditions requiring the landlord to comply with the Orders made on 9 September 2016 and 31 October 2016. At the time of writing this Report VCAT had yet to list that urgent application.

Appendix 8

**Case study: Willow Lodge
Village – Consumer Action Law
Centre**

Willow Lodge Village

At the time of writing, Consumer Action represents 14 clients who live at the Willow Lodge Village in Bangholme, Victoria (Willow Lodge).

Willow Lodge is a retirement park regulated by the *Residential Tenancies Act 1997* (Vic). Willow Lodge has approximately 400 demountable homes and 600 residents.

Willow Lodge is owned and operated by Walter Elliott Holdings Pty Ltd (Walter Elliott). Walter Elliott is a prominent, mainstream provider of retirement housing and promotes itself as owning and operating 27 retirement housing properties throughout Australia, 3 of which are located in Victoria. According to a 2014 market research report, Walter Elliott is the largest manufactured home estate operator in Queensland and a “leading developer of Over 50’s lifestyle manufacturing parks.”

The litigation

All 14 clients entered into site leases with Walter Elliott which contained a deferred management fee (DMF) term. The term calculated the DMF as 4% of the “park home sale price” for each year during which the client resided at Willow Lodge to a maximum of five (5) years (i.e. 20%).

In December 2014, our 14 clients commenced a group proceeding in the Victorian Civil and Administrative Tribunal (VCAT) in which they all claimed that the DMF was an unfair contract term, operated as a penalty and was harsh and unconscionable. Some of the clients also claimed that the fees were invalid due to non-compliance with the *Residential Tenancies Act 1997* (Vic) and that Walter Elliott had engaged in unconscionable conduct.

The proceeding was listed for a 5-week trial commencing on 18 July 2016.

In June 2016, the parties agreed to settle the proceeding on non-confidential terms. Settlement occurred 18 months after the initial VCAT application was lodged, and years after residents first raised concerns with their park owners.

The settlement

Six of the fourteen clients settled on the basis that their DMF will be completely waived, and all references to the DMF removed from their site leases.

Two of the clients settled on the basis that they will enter into a deed of variation, whereby their DMF was reduced from 20% over a five-year period, to a flat 4% of the Park Home Sale Price.

The other six clients settled on the basis that they would enter into a deed of variation to calculate the DMF as 1.2% of the Park Home Sale Price for each year of occupation, up to a maximum of 10 years (i.e. a total of 12%). Those clients also received a \$3000 payment per household in consideration for personal stress and inconvenience suffered by them throughout the proceedings.

In addition, all of the clients settled on the basis that a rent review clause would be written into their lease agreement. The clause will require an independent valuer to determine the new rent on each market rent review date, by reference to market value of the home (but not taking into account an increase in market value as a result of capital expenditure by Walter Elliott during the previous term of the lease).

The rent review clause also requires Walter Elliott to commit DMF revenue to capital improvements to the park, and for that expenditure to be made following prior consultation with the park residents' committee. If requested, Walter Elliott must provide an itemised list of expenditure within 3 months from the end of the financial year to demonstrate that this requirement has been complied with.

Elderly and vulnerable consumers as litigants

Our 14 clients all have low levels of education and are either pensioners or low-income earners. The oldest client is 84 years old, and the youngest client is 50 years old but suffers from an acquired brain injury. Prior to this case, all had limited (if any) exposure to the legal system and none had engaged a lawyer in relation to a consumer law or commercial dispute.

Elderly consumers are not well-equipped to deal with lengthy and adversarial litigation for two key reasons. Firstly, many are in declining health. In this case, after commencing the proceeding against Walter Elliott:

- One of our clients was admitted to hospital 8-10 times to treat a vascular condition with their hospital stay ranging from 2 days to 2 weeks per admission;
- One of our clients was treated for breast cancer and is waiting to move into a nursing home;
- One of our clients underwent bowel cancer treatment, including chemotherapy and radiation, and now uses a stomach bag;
- One of our clients suffered a heart attack and will require surgery for a heart bypass;
- One of our clients has a neurological condition and suffered from random and uncontrollable seizures throughout the litigation;
- One of our clients was hospitalised for two weeks due to a kidney infection;
- Five of our clients were the spouses and carers for the above clients.

A consumer's declining health will affect their ability to litigate their claim. If the proceeding is delayed, the consumer may be too unwell to continue their claim until completion. That is a unique prejudice which affects elderly consumers. In this case, the trial would have concluded 20 months after the proceeding was commenced. For elderly consumers, justice delayed is justice denied.

A second issue is that litigation is stressful. Had this matter proceeded to trial, our clients would have been cross-examined for several hours, potentially up to one day per client. That is particularly intimidating for elderly clients who suffer from medical conditions. An ombudsman scheme which allows consumers to make written submissions and appear by teleconference is a more appropriate forum for elderly consumers.

Access to Justice

Without legal representation, many elderly consumers are unable to challenge the fees charged by retirement operators in a Court or Tribunal. The evidentiary onus on a consumer to prove their claim is significantly higher at a Court or Tribunal than at an ombudsman scheme.

In this proceeding, the parties and/or their legal representatives were required to attend direction hearings, 2 full day mediations/compulsory conferences, and respond to and appear at 3 interlocutory applications on a variety of issues. Our clients filed 30 witness statements spanning approximately 800 pages (including attachments). Both parties were ordered to make discovery and discovered 319 categories of documents. An elderly consumer could not have litigated this claim without legal representation.

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Costs

Retirement housing disputes are complex and hard fought. As such, prosecuting these claims are expensive and out of reach for many elderly consumers. This proceeding was set down for a 5-week trial. Appearing at the trial alone would have cost approximately \$200,000 to \$300,000 for legal fees and disbursements including fees for two barristers, a team of 3-5 lawyers to assist with the trial, an expert witness to give evidence, and the fees for court transcripts.

Taking into account the 18 months of litigation prior to trial, an elderly pensioner could not afford to pay for a lawyer to pursue their legal rights in VCAT or a Court. This has significant consequences for elderly consumers being able to access justice.³⁸⁵

385 Consumer Action Law Centre, Submission 749, pp 8-11.

Appendix 9
**McCrindle Baynes Villages
Census Report 2013**

Overall results

Making the move

- More than half (53 per cent) of the village residents moved 10 kilometres or more from their previous home to their current village residence.
- Most (79 per cent) did not move a greater distance than they had wanted or anticipated.
- A majority (51 per cent) spent a year or less thinking of moving from their previous home, and for 43 per cent this was influenced to some extent by a previous significant health incident.

Push and pull factors

- Top 3 reasons residents chose to leave their previous home (Push factors) was to downsize while they could, their home was becoming too big to manage, and freedom from house responsibilities to be able to pursue other interests.
- Top 3 reasons village residents chose their particular village (Pull factors) were because they could stay independent, safe environment and emergency support, and onsite maintenance.

Residents' expectation and satisfaction

- Village residents mostly felt that their village operator managed their village effectively, with a majority (51 per cent) stating that they were 'very' or 'extremely' effective.
- Village residents mostly felt that their village manager managed their village effectively, with a majority (67 per cent) stating that they were 'very' or 'extremely' effective.
- Residents generally felt that most services and features were offered by their village, however areas for potential growth included the provision of visiting doctor or medical services, and a village bus for external activities such as shopping and outings.
- Village residents are mostly satisfied that their expectations have been met, with 65 per cent indicating this. Furthermore, 75 per cent were happy with their decision to move into their village and would make the decision again.
- The industry average Net Promoter Score was an astounding 25 which makes this the highest rated industry of all available data, 40 points higher than the average Australian industry performance of -15.

A9

Village affordability and financial sentiment

- Most village residents indicated that their main income source was through government pension or allowance (77 per cent).
- Almost all residents funded their village home by selling their previous family home (90 per cent).

- Whilst it was most common for residents to indicate that cost of living remained the same (when compared to living in their previous home), there was a higher proportion of residents who indicated that it was more expensive (compared to those who stated it was less expensive).
- Overall, most residents felt financially secure to meet both their current and future financial needs. Furthermore, a majority felt that their decision to move into a village had been a good financial decision (90 per cent).

Life in the village

- Most village residents participated to some extent in village organised activities, with almost half (48 per cent) stating they did so weekly. Furthermore, more than half (54 per cent) indicated that they were still involved with the outside social clubs and groups prior to their move.
- Most residents (51 per cent) indicated that they were visited by family and friends either regularly or very regularly (around every week or so).
- Whilst for half (46 per cent) their social life stayed the same, for 45 per cent it had improved to some extent.
- Village residents had positive experiences with village living, with half (50 per cent) stating that their overall life satisfaction and happiness had improved since moving in.³⁸⁶

386 The McCrindle Baynes Villages Census Report 2013 Executive Summary, pp 5-6.

Appendix 10
**Examples of internal dispute
resolution processes**

Ryman Healthcare – Ms Debbie McClure, Group Sales Manager, Public hearing, 28 September 2016

Ms McCLURE —Our dispute process is to start with what we have as an independent village advocate. It is an independent person, but we do pay for that. I think that is a little bit complex in that people may be naturally suspicious that if you are paying for a village advocate, they are going to be agreeing with everything that the company says. I can tell you that is not the case. We did not need to have a village advocate here in Victoria. We were not needing to as part of the legislation, but we chose to anyway. What is really fascinating for me is that our village opened early in 2014 here and that village advocate has not had one phone call, one email or one letter from any of our residents who live in our village here. I would put that down to the way we handle the complaints and concerns in our village.

We would encourage the residents in the first instance to speak to a senior member of staff in the village and the village manager. It is also very transparent to them as to who in our regional office here are people that they can speak to should there be a personality conflict between a resident and a village manager, because that can happen. Then we have the process when a complaint is lodged that it has to be within 72 hours that the person has had communication back that their complaint has been received and the time frame of that being processed. Then within seven days there has to be a meeting with the person who has made the complaint with the village manager and identified what action is going to take place to resolve it and then formal letters and all that as well.

We identify that if something is a low risk it would not have as much priority. If it is a high risk, it is obviously resolved much faster. I think as well as that we have other processes in place. We have a dedicated residents' relations team in our main office, so every resident who moves into one of our villages, whether it be independent apartments or serviced apartments, actually receives a phone call from that residents relations team to ensure that they are happy with their move, that they are happy with their apartment and that they have received what they were told they would receive with their apartment. That is done after they have moved in. They are also given that team's contact details so they can approach them at any time should that not be the case.

So I think we have got good processes in place. There are really good different streams of communication for people to approach our company. It can be a bit intimidating for a resident. We would love everybody to want to feel really free to go and talk to the village manager, but some people can feel that if they do that they might be seen as a troublemaker or a complainer or something. While that would not be the case, you need to have other avenues for people to be able to feel confident in making complaints.

Stockland – Mr Stephen Bull, Chief Executive Officer; Mr Clayton Severino, Senior Legal Counsel, Public hearing, 12 October 2016

Mr BULL — Clearly their first point of call is their village manager, but to the extent that their complaint involves the village manager or other staff, that is problematic. So we also have a step process where they can raise issues with their area or state manager, who they get to see regularly because they visit the villages. We also have a head office customer service line where they can bypass all staff and go straight to our customer service line. There are a whole range of steps they can follow.

Mr SEVERINO — There is a clearly defined policy, and that is communicated to residents.

Aveo – Ms Angela Buckley, General Manager Operations, Public hearing, 12 October 2016

Ms BUCKLEY — As part of our complaints or our issues resolution process, we encourage our residents to go to our territory managers. We also have our quality and compliance managers that do relief management. So what we do is, when a village manager goes on leave, we put in a more senior quality and compliance manager to go in there and to lift the lid, but also to be there to see what is going on and get a feel of the village. So if there is anything, they are there as well; there is another person that the residents can go to. We also have a national concierge service. That is a number that can bypass all levels of management. It is manned by customer service agents, who residents can talk to or even just talk with — sometimes it is just about somebody hearing you. They listen to their issue, and if there is an issue, then it is obviously passed on to the necessary person.

For us it is really around making sure that we act on our complaints. Certainly when we have issues like around management issues, we certainly act on those and do not tolerate any management poor performance. But, as you would know, we have to obviously act within the employee relations law, and sometimes residents do not think we act fast enough, and obviously for confidentiality reasons we cannot actually tell them what we are doing. So even when we do have an issue with a manager, we work with them and we do what we can and we move them on, but we obviously cannot communicate that to the residents.

From a compliance and regulation perspective, just to let you know that at Aveo we have got 723 policies and procedures and we have 299 forms and supporting documents. It is a lot; I do not want to scare anybody. But just to let you know that we actually have four internal quality audits. So we have the work, health and safety annual audits. We have an annual operational audit conducted by our operational compliance managers. They audit to the Retirement Villages Act, and they follow the Lifemark accreditation. We have a biennial quality company audit, so that is actually people from our finance department that audit every village every two years. They go over the policies and procedures and make sure

that we have got all the right documentation — just some things double up. Then we also have deep-dive village audits, and that is one to two per annum here in Victoria. That is where we audit everything from beginning to end. All of our villages are accredited through Lifemark, and we have done it over three years because obviously we have a significant amount of them, but also to get them all done we had to do a three-year process.

Baptcare – Ms Mary Goldstein, Retirement Living Manager, Strathalan Community; Ms Nicole Hornsby, Senior Strategic Advisor, Regulatory Policy Lead, Public hearing, 26 October 2016

Ms GOLDSTEIN — It is a really interesting question, and I think it is somewhat predicated on that philosophy. I cannot speak for all colleagues, I can only speak obviously from our own experience, and in our own experience I think our driving force, if you will, is, ‘Your interest, really, is our first priority’. So I have to suggest that that is one of the reasons that our results are so positive. Our strategy, if you will — how does it work, I think is what you are asking — is in the first instance: if you have a complaint, our guidelines are first and foremost to come and speak to the community manager in each of our properties who in turn would obviously take your complaint on board, and these things are often nuanced as you would understand, and have to come up with a creative solution throughout the community. There is no blanket answer for that. It is not something that can be legislated, if you will, because we are dealing with people who have particular and peculiar or some specific concern that just has to be resolved, and we tend to do it at the grassroots level before it escalates. I do not know if that is a comprehensive answer.

Ms HORNSBY — I think it is the driving philosophy, and it is also the level of support that you provide to a resident to actually assist them in resolving their own issues, depending on who the issue is with, whether it is with another resident or whether it is with the operator ourselves, and that support that we give them and access to advocates, if required. We try to find those for them, and we support them through that process. We operate a residents’ committee, which they support, so they have peer support to actually work through those types of complaints as well.

Appendix 11

**The South Australian retirement
villages advocacy model**

The Aged Rights Advocacy Service (ARAS) Incorporated is a not-for-profit community based organisation that offers a free, confidential and state-wide advocacy service. ARAS assists people using aged care services in residential care or in the community, or those at risk of, or experiencing, abuse.

The Australian Government funds nine community-based advocacy organisations in each State and Territory under the National Aged Care Advocacy Program (NACAP). ARAS, established in March 1990, is the South Australian component of the NACAP (the Victorian component is the Elder Rights Advocacy). They provide:

- Information
- Support for decision-making
- Assistance for people to exercise their rights
- Education and community awareness sessions
- Input into policy that impacts older people.

ARAS promotes the rights of older people and aims to increase the amount of control older people have over their goods, services and quality of life, and to develop a sense of empowerment and of being valued as an individual and citizen.

ARAS focuses on:

- Promoting individual advocacy by assisting clients to exercise their rights and responsibilities
- Providing information which enable informed choices, decision-making and self-advocacy
- Raising awareness of the rights of consumers to the aged care industry, government and the community
- Providing education and community development
- Influencing policies practices and structures within aged care.

The ARAS advocate will:

- Listen and ask questions to clarify the specific issues
- Provide information about the rights of the older person and strategies to resolve the problem (including a discussion of any negative consequences that may arise from certain actions)
- Provide consultation and information during the advocacy process and will continue to provide support until the issues are resolved (or provide information and a referral to services which can assist).

ARAS can arrange to visit a client's home or by appointment in their offices and an interpreter can be arranged, if required.

The ARAS organisational structure is as follows:



Source: Aged Rights Advocacy Service Annual Report 2014-15, p.3.

ARAS has five programs that provide access to special needs groups:

- (a) ARAS Residential Care Program
- (b) ARAS Home and Community Care (HACC) Program
- (c) Retirement Village Advocacy Program
- (d) ARAS Aboriginal Advocacy Program
- (e) ARAS Abuse Prevention Program

Advocacy for residents of retirement villages

ARAS has provided a Retirement Village Advocacy Program for South Australian retirement village residents since late 2014. This program is supported by the Office for the Ageing (SA Health) and provides advocacy support and assistance for residents of retirement villages in order to assist them to voice their concerns to the retirement village management or administering authority.

The Retirement Village Advocacy Program aims to provide support to residents with regard to issues which relate to their residency. The advocate provides:

- Information about rights and entitlements relating to residency of Retirement Villages and support residents in speaking up about disputes or concerns relating to their residency, around the requirements of the legislation, regulation or individual contract
- Advocacy support, assistance or representation when an individual resident and / or groups of residents need to:
 - Contact an administering authority

- Contact the Office for the Ageing
- Attend Residential Tenancy Tribunal or South Australian Civil and Administrative Tribunal.

Advocacy support is provided in relation to the resident's contract, in accordance with South Australia's *Retirement Villages Act 1987* and the *Retirement Villages Regulations 2006*. ARAS may work with the retirement village operator or administering authority, Office for the Ageing, the Residential Tenancy Tribunal, or the South Australian Civil and Administrative Tribunal.

The Retirement Village advocate conducts education sessions for retirement village residents. Since the commencement of the program, the Retirement Village Advocacy Program has noted primary issues of concern raised with the service related to:

- Communication difficulties with management
- Concern about the internal complaints process at the retirement village
- Issues associated with maintenance and associated fees
- Remarketing and the payment of exit fees.

