



## Manufactured Home Owners Association (Vic) Inc.

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# NEWSLETTER

JULY 2025



As you are all aware, some land lease residents put questions to the VCAT member, Justice Woodward, in July during a VCAT hearing Dowling v Lifestyle Management 2.

Below are some of the questions asked by the Applicants with answers given by Justice Woodward.

### Abbreviations:

RSA	Residential Site Agreement
RTA	Residential Tenancies Act
LM2	Lifestyle Management 2.

MHOA have provided the **RTA** relevant section below the answers

**(a) Question:** Do any of the terms for payment of the DMF in the RSA breach s 206ZZG (1)?

**Answer: No**

### RTA:

#### 206ZZG Site owner cannot ask for fee for giving consent

(1) A site owner must not demand or receive a fee or payment for giving consent to the assignment of a site agreement or the sub-letting of the whole or any part of a Part 4A site.

**(b) Question:** If yes, are those terms (and if so which) void under s 206F (3)?

**Answer: Unnecessary to answer**

No response  
is a response. And  
it's powerful one.

Remember  
that.

### RTA:

#### 206F Terms of site agreement )

- (3) A term included in a site agreement is void to the extent that—
- (a) it is inconsistent with this Act; or
  - (b) it purports to exclude, restrict or modify the application of, or the exercise of a right conferred by, this Act; or
  - (c) it is inconsistent with the prescribed terms referred to in subsection (1)(a) or inconsistent with the matters referred to in subsection (1)(c). or both

(c) **Question:** Do any of the terms for payment of the DMF in the RSA breach s 206S(1)(b) or (c) (or both)?

**Answer:** The terms of the payment of the DMF in the RSA breach s 206S(1)(b), but do not breach s 206S(1)(c)

**RTA:**

**206S Rent, fees and charges under site agreements**

- (1) A site agreement must include details of—
  - (b) the amount of the rent, fees and other charges payable under the site agreement; and

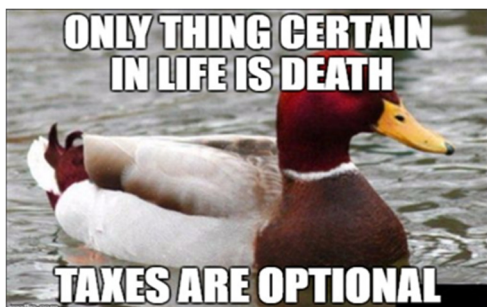
(d) **Question:** If yes, are those terms (and if so which) void under s 206F (3) or should VCAT declare that LM2 must not require payment of the DMF as provided by s 206S (2) (or both)?

**Answer:** The terms imposing the DMF in all the RSAs are void under s 206F (3) and VCAT should declare pursuant to s 206S (2) that LM2 should not require payment of the DMF.

**RTA:**

**Division 3—Rents and other charges 206S Rent, fees and charges under site agreements**

A site owner must not require payment of any amount under the site agreement if the amount has not been disclosed in the site agreement in accordance with this section.



**Site rent charged  
after the death of a resident**

(e) **Question:** Having regard to the terms of the RSA alone, should the Tribunal under s 206G declare to be invalid or vary the provisions of the RSA that **allow the respondent to charge rent and other charges after the death of a resident but prohibit the use of the home until it is sold?**

**Answer:** VCAT should under s 206G vary the provisions of the RSA so the home can be used after the death of a resident with the consent of LM2, which consent should not be unreasonably withheld.

**RTA:**

**206G Harsh and unconscionable terms**

- (2) On an application under subsection (1), the Tribunal, by order, may declare invalid or vary a term of the site agreement if it is satisfied that the term—
  - (a) is harsh or unconscionable; or is such that a court exercising its equitable jurisdiction would grant relief.

**MHOA Comment:**

If an estate is being charged rent after death of a resident, and the fee is not mentioned in the site agreement, this section could also be used as an argument to VCAT to disallow this fee under section 206s

**RTA:****Division 3—Rents and other charges****206S Rent, fees and charges under site agreements**

- (2) A site owner must not require payment of any amount under the site agreement if the amount has not been disclosed in the site agreement in accordance with this section.

**“Summary of Reasons” delivered by Woodward J – 7 July 2025**

*In my judgment, the DMF provisions in all the RSAs in both the Wollert and Chelsea Heights proceedings fail to specify the ‘amount’ of this ‘other charge’ as required by s 206S(1)(b). Accordingly: (a) the term purporting to impose the DMF in each of the RSAs is inconsistent with the RTA **and is therefore void pursuant to s 206F (3)**; and (b) by operation of s 206S (2), LM2 **must not require payment of the DMF from any of the applicants in these proceedings**. 10. In view of my finding above, it is not necessary for me to reach a concluded view on whether the RSAs include details of the purpose for which the DMF is charged as required by s 206S(1)(c).*

*While the statement of the purpose in the RSAs is broad and unspecific, **it probably does state the ‘purpose’ in sufficient detail to avoid contravening the section**, essentially for the reasons given by the respondents. 11. In any event, a failure to state the purpose does not engage **s 206S (2), which is only concerned with the failure to state the amount**. It is also far from clear that a failure to state a purpose (or to do so sufficiently) is ‘inconsistent’ with the RTA and, if it is, **what is the ‘term’ that is void, pursuant to s 206F (3)? Is it just the description of purpose**, or would this result in striking down the entirety of the DMF provisions? These matters are not canvassed in the parties’ submissions and it is unnecessary for me to say more about them.*

## Comments issued by HAAG:

*The Residential Tenancies Act provides that no fee or charge can be imposed under a site agreement unless the amount is disclosed. An amount based on the sale price of a Part 4A dwelling cannot be properly disclosed, and so cannot be charged.*

*"These fees aren't just technically unlawful, they're deeply unfair and can have a huge impact on older Victorians. They can limit people's access to aged care, reduce the amount they can leave to their families, and trap people in badly mismanaged and substandard accommodation," said Mr McGrath.*

## **The Weekly Source** Jul 09 2025 by Ian Horswill

### **What's changing?**

- **For deposit holders and future homeowners: Lifestyle Communities will now calculate the DMF based on the purchase price of the home, pro-rated over a five-year period to a maximum of 20%.**
- **For existing homeowners leaving a community:** the operator will continue to operate under the existing contract arrangements, unless VCAT issues final orders directing otherwise.
- **For deceased estates, Lifestyle Communities will no longer charge rent.** Justice Woodward found that while charging rent post-death is permissible, **the estate should be allowed to have someone live in the home in the intervening period**, with Lifestyle Communities' written consent – which should not be unreasonably withheld.

**MHOA Note: Final orders have not been made yet.**

## **MEMBERSHIP RENEWAL FEES BECOME DUE 1 JULY**

As previously advised, membership fees are now \$10 per person per year. 1 July to 30 June 2026.

Renewals can be done from our website or download a paper copy from our website

[www.mhoavic.com](http://www.mhoavic.com) Renewal forms were also sent with our June newsletter.

## **Reminder to members who Bank Transfer their memberships**

When paying your membership fee please put **your first name and surname** on the bank reference as we have so many residents with the same surname it is hard to know who has paid the money into our account.

Also, please do not forget, **if you are a new member** we need your Application Form to obtain all your details for our register which is a regulatory requirement.

Thank you to those residents who have already sent in their renewals.

## **NEWS UPDATES**

The release of the **CPRC Report** has been delayed due to the minister taking annual leave. We now anticipate this occurring in August.

The **standard site agreement** is well underway and, if all goes to plan, it should be in place on 1 October.

*Judy & Carmel*

**Business hours: Mon-Fri 9am—4.30pm**