



*MHOA (VIC) Inc*

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Manufactured Home Owners Association  
(Vic) Inc

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## **SUPPORTING MANUFACTURED-HOME OWNERS OF VICTORIA**

27 April, 2023

To Retirement Villages Amendment  
Consumer Affairs Victoria  
GPO Box 12  
MELBOURNE Vic 3001

By Email: [rvreview@justice.vic.gov.au](mailto:rvreview@justice.vic.gov.au)

Dear Sir/Madam

### **Retirement Village Act Review – Option Paper**

The Manufactured-Home Owners Association (Vic) Inc, (MHOA), was formed to support, advise and advocate for those who live in manufactured homes and residential villages/parks in Victoria.

MHOA is a non-profit, self-funded and volunteer-staffed association assisting Manufactured-Home Owners in residential parks and villages for all of Victoria. It provides its members with information and advice on matters pertaining to Part 4A of the Residential Tenancies Act 1997.

### **MHOA believes the issues being reviewed for the RVA mirror similar issues raised by manufactured-home owners in Victoria.**

We have attended inquiry after inquiry, put in submission after submission and have been ignored. We, as individuals, have also put submissions into the Legislative Council Legal and Social Issues Committee Inquiry into the Retirement Housing Sector 2016, believing that our contributions reflected the issues of the RVA, and that our contribution would be taken into account and flow through to the RTA 4A legislation.

In Victoria, the legislation that governs these residential village/parks is lumped in with Caravan parks and split between Part 4A and Part 14 of the *Residential Tenancies Act 1997*, and the *Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2010*. There is apparent conflict between these diverse regulations, which can leave management and residents at loggerheads. A thorough investigation and reform of the entire retirement living industry is long overdue.

The current RVA review recommendations do not reflect this sector's requirements. Victoria needs to lead the nation on retirement village reforms but instead the review has missed the mark in so many areas.

Our regulators have a lot to answer for. Legislative change and an Ombudsman are overdue and this reflects governmental failure to protect the rights of its vulnerable citizens. Leadership would obviate the need for the stream of different and sometimes overlapping recent inquiries and sometimes non-uniform amendments to retirement village legislation at a state level.

Legislation that governs our lives, now needs to be amended for the better, not simply skimmed over and producing a document that does not reflect the concerns submitted by many residents who will continue to live under legislation that is outdated and not fit for purpose.

How well do existing laws and regulations protect over-55s from situations that may be experienced as exploitative or unfair, as well as demoralizing? There are gaps in legislation that provide opportunity for exploitation. It is difficult to understand how operator conduct such as verbal abuse, threats and intimidation can be construed in any other way, and why the burden of proof required by the regulator is higher than that required by the Tribunal, a body with the power to make legally binding orders.

MHOA will submit comments and recommendations, as the lived experience of residents currently living in similar types of accommodation, with mirrored issues that this review will decide on, even though this review will not benefit the RTA 4A sector directly. It is vitally important that the outcome of this review is fit for purpose.

- **06 September 2018 COUNCIL Committee SAMANTHA RATNAM (GRN)**  
“The situation that faces many residents in these parks is that effectively they have the worst of both the renting and the owning worlds: they own a dwelling but rent the land, which can give them the insecurity of renting but the responsibilities of owning.”
- **Legislation - RESIDENTIAL TENANCIES AMENDMENT BILL Page 4997 17 September 2010 BARBER ALP**  
“Now we come to the quite confusing part of the bill that relates to some extra measures for caravan parks. We have some concerns that Part 4A, which is being inserted, is very complex and hard to navigate, not only for people directly affected, being tenants and site owners, but also for solicitors who are going to have to advise people when they are signing an agreement, parts of which may or may not be relevant to Part 4A; and for that matter when those signatories, after the fact, go looking for some advice, they may find that they need to consult this Act.”

**We need to form a submission with the comments and recommendations directly from the voices of residents, and our own experiences, including the following:**

- **Legislation:-** Where residents are required to be policing non-compliance of legislation there is something systemically wrong. The legislation framework needs to clearly define the rights and obligations of both residents and owner/operators.
- **Registration/Regulation:-** Transparency for homeowners in regard to their future financial obligations should be fully available to the prospective purchaser, so they are able to seek further information and advice prior to signing any contracts. This will not alleviate the issues completely, but will allow prospective buyers to do their due diligence by accessing a website, where they can compare villages facilities, fees, lease agreements. This could be in the form of 5-star ratings on various factors, with review comments from existing residents. South Australia has a register and a comprehensive public website to search many aspects of each village.

- **Compulsory training** is required for a mutually beneficial working relationship between residents and managers, and to build understanding of older people and their needs in this area of lifestyle choice. Introduce mandatory staff training and village accreditation requirements, and adopt a similar course to the real estate training course conducted by the Victorian Equal Opportunity & Human Rights Commissioner.
- **Appoint an ombudsman** with the power to enforce correction of unequal and unfair complaints. Provision of an Ombudsman will provide a safe place that elderly people recognise and will feel safe in making their concerns known, without potential reprisals.
- **Standard contracts:-** Reduce the complexity of contracts and business models, show full disclosures on fees and charges, have leases written in plain English with simplified clauses that residents are able to understand. These are all benefits of standardised contracts.
- **Fees and Charges:-** Stop excessive fees, regulate the fees and charges in legislation. Regulate fees, with regular reviews of contracts by regulators in a scenario where contracts are standardized, where no other fees can be charged. Abolish exit fees (also known as deferred management fee), or allow a small percentage of exit fees to be applied to the **purchase** price of the home, **not the sale price**. This protects any capital gains that may be made on the sale of the home, which is fully owned by the resident, not the operator. In respect to rent, it should be capped at 30% of the Age Pension (not including Rent Assistance), to prevent residents being pushed into rental stress.
- **Fees after death:-** Greater clarity is required around what happens when a resident dies, and their family inherits their dwelling, with greater protections against the estate being liable to meet ongoing rent and exit fee costs, or these being void or reduced from the moment the death of the sole occupant occurs. Residents have told MHOA this area is always watered down. They believe that the regulators must condone the excessive gouging of fees for everything in these villages. It is vital that regulation of fees and charges are strengthened to ensure they are fair, easy to quantify and reflect the actual value provided to the homeowner. We want value for our money.

In response to the questions in the Options Paper, MHOA provides further detail below:

### **1. What does the Act need to include to support well-functioning retirement villages?**

How well do existing laws and regulations protect over-55s from situations that may be experienced as exploitative or unfair, as well as demoralizing? There are gaps in legislation that provide opportunity for exploitation.

The protections and rights of residents need to be the core of the legislation, as these are our homes. It is a business for the operators, and we understand they need to make a profit, but without residents there would be no village/park, without the village there would be no home, without the residents/village there would be no income for the operator.

This is a problem throughout the entire retirement living sector, not just RVA, but RTA 4A as well. It is difficult to understand how operator conduct such as verbal abuse, threats and intimidation can be viewed in any other way, and why the burden of proof required by the regulator is higher than that required by the Tribunal, a body with the power to make legally binding orders.

### Recommendation 1

Legislate, clearly and concisely, the regulatory framework with the rights and obligations of owners, managers and residents, then enforce that legislation.

### Recommendation 2

The law should be specific in prohibiting behaviour which is socially abhorrent, and continue to strengthen residents' rights and protections in all revised Acts.

### Recommendation 3.

Allow for prospective buyers to do their due diligence by accessing a website where they can compare villages facilities, fees, lease agreements.

Why did the government not include amendments to require residential village/park owners to register with Consumer Affairs Victoria?

MHOA support HAAG's comments below:

**HAAG** – "We also support requiring all new retirement villages to be licensed by Consumer Affairs Victoria (CAV). This should include owners submitting a retirement village scheme or plan, and meeting minimum standards in terms of training, qualifications, good character and financial stability prior to approval."

## 2. What information should be provided to prospective and current residents and when?

MHOA would support standard leases reducing the complexity of contracts and business models, at the time of buying. Residents are usually vulnerable when deciding to enter village life, having differing circumstances or crises in their lives, such as divorce, the death of a partner, or health problems.

A resident's mind set at this time in their lives, is to get settled into a safe space, no matter the consequences, rather than relying on disclosure from a profit sector to improve their understanding. Disclosures should be legislated into standard contracts and be in plain language that all residents understand, even during stressful times.

No one can guarantee that written disclosures will provide complete information to prospective residents, especially if the disclosure documents are written by the owner/operators. It would assist with understanding if the regulators, in conjunction with residents who have that lived experience, format the information documents. This would allow implementation in plain English, directed at the residents without any hidden agendas.

### Recommendation 4.

- a) MHOA would support Registration/Regulation of all retirement sectors, where a public register has Mandatory Registration. It would make sense that Consumer Affairs Victoria (CAV) be required to oversee a public register **of all retirement sector providers**, as they already do for retirement villages, with penalties for non-compliance. In the case of manufactured-home villages (MHVs) or residential villages/parks, councils should be required to provide their register to a central department, such as CAV.
- b) Residents find it difficult to understand their rights and obligations under the law. The Victorian Law Institute has already told us that they do not have members that are properly across the legislation as written, so how are residents expected to understand it?

- c) All MHV Leases should be standard leases, with the same rights for all, with some flexibility for particular circumstances, such as agreed modifications for residents who need them.
- d) That Victorian Legal Aid lawyers be trained in RTA 4A legislation, and those lawyers are made available to all MHV residents who need assistance and advice in taking their Operators to VCAT.

MHOA agrees with HAAG's comments below:

**Shane McGrath (HAAG)** "It is interesting that if you're a renter in Victoria, or a rooming house resident, there is a prescribed lease with standard terms that you have to be offered, but if you move into a residential village/park then the owners or their lawyers come up with the agreement themselves, which are usually complicated and can be unfair to the residents."

"They are written in ways that are difficult to understand. They are drafted in ways that are designed to be unfavourable to residents."

### **3. How can protections for exiting retirement village residents be strengthened?**

#### **Site Fees-**

The onus should not be on the homeowners to take a dispute over site fee increases to the Consumer Affairs office, as it is the village owner seeking a change to the site fee. It is vital that regulation of fees and charges be strengthened to ensure they are fair, easy to quantify and reflect the actual value provided to the homeowner

Monthly/fortnightly/weekly fees continue to rise to the point where they may outstrip the pension income of residents until they will no longer be able to be able to afford to live in these villages. The manufactured home industry includes some of these fees in their lease agreements, however, extra fees may be hidden and could require money that some residents do not have.

**Exit fees** – (sometimes referred to as Deferred Management Fees (DMF)) can accrue to well over \$100k. DMFs range from 20% to 40% of the sale price, or in some villages, the purchase price, which is payable to the village owners. This means residents wishing to relocate can become financially trapped and unable to leave. However, it should be noted that not all villages have exit fees.

The exit fees with residential villages/parks are double dipping by these operators who have taken these fees from the RV model, yet MHV operators/owners have no expense comparison with the RV sector as they do not provide the same services.

The argument put by the industry is the exit fees help to keep the site fees at an affordable cost was debunked, when MHOA compared two villages that have the same facilities. One has no exit fee, while the other paid 3 per cent in exit fees for 12 years, or roughly \$9K per year. One has a \$40 per quarter water fee that the other doesn't have. Working it all out, the one with exit fees pays \$28 more per year than the one without, but with the exit fee it is significantly more. We want to know why the people who run these villages say they need the exit fees when our monthly/fortnightly/weekly fee pay for all the maintenance if you work on these two scenarios it just doesn't add up, that with the same facilities, and there is only a difference over a year of \$28 more. It would be interesting to do further comparisons.

#### **Recommendation 5**

- a) Regulate all fees, with regular reviews of contracts by regulators in a scenario where contracts are standardized

- b) Abolish exit fees- or allow a small percentage of exit fees to be applied to the **purchase** price of the home, **not the sale price**, as it would take a crystal ball to know how much a home will be worth at the time of sale, which could be 10 years or longer after purchase. When the exit fee is based on the sale price, the operator gets free capital gains, where the resident made improvements to the home without any financial assistance from the operator.
- c) Greater clarity around what happens when a resident dies and their family inherits their dwelling, with greater protections against the estate being liable to meet ongoing rent and DMF costs, or these being void or reduced from the moment the death of the sole resident occurs.

**Residential Tenancies Amendment Bill 2018 Page 4812 06 September 2018 COUNCIL Committee SAMANTHA RATNAM (GRN)** “Many Part 4A residential parks are now charging residents a deferred management fee, which is an exit fee traditionally charged to retirement village residents. There is no regulation of these fees, and they can be applied very unfairly. We would have also liked the bill to do more for caravan park residents, such as regulating deferred management fees and regulating the operation of Part 4A parks.”

#### **4. Are the current internal and external dispute resolution processes adequate?**

##### **VCAT- Ombudsman**

The MHOA considers that the current internal and external dispute resolution processes are definitely inadequate.

If we all had to collectively make sure everyone was wearing their seat belts, it would not work. If you have to enforce every single section of the law and there are no police that can enforce the law, it does not work.

It works if there is an independent person who catches people who are doing the wrong thing and tells them to stop, be it resident or operator, so there is a fundamental problem with how dispute resolution works where we are all reliant on VCAT. Operators generally have their own lawyers, whereas residents cannot afford that, so there is a definite power imbalance.

**An ombudsman would be the preferred option** -There is no requirement for owners/managers to be adequately trained to manage these parks, and no incentive for them to get things right and promote harmonious living conditions for residents. So, there is a fundamental problem with how dispute resolution works where we are all reliant on VCAT. Once again, a perfect example for establishing an ombudsman.

##### **Recommendation 6**

MHOA supports the establishment of an independent, expert, retirement housing ombudsman service:

- a) Appoint an ombudsman with the power to enforce compliance. An ombudsman brand is a brand that elderly people recognise and feel safe in taking their concerns to.
- b) Amended legislation to allow for homeowners to act jointly in relation to residential village/park disputes. Threats and acts of intimidation from operators are not acceptable, making an Ombudsman a safe route for residents in making their concerns known.
- c) Compulsory training is required for a mutually beneficial working relationship between residents and managers and to build understanding of older people and their needs in this area of lifestyle choice. It is necessary to adopt a similar course to the real estate training course conducted by the Victorian Equal Opportunity & Human Rights Commissioner.

**VCAT Dispute Resolution- 06 September 2018 COUNCIL Committee SAMANTHA RATNAM (GRN)** “We would have liked to have seen this bill do more to change the system — for example, creating a less adversarial dispute resolution process rather than working within the existing VCAT system. It is important for us to regulate this area, and frankly, as time goes by there will be further acts of Parliament to deal with the area of people who live in these dwellings.”

**Shane McGrath (HAAG)** “For a regular renter, going to VCAT alone is fine because you’re renting a house from another individual landlord but if your issue is about a rental increase or a policy or park rule that effects dozens of residents or hundreds of people in a village it makes sense that the outcome of a hearing should apply across the board.” Each individual decision is treated as an individual decision but without it, things just go on as they are, so in the short term we need to go to VCAT to address things. In the longer term we do need to think about a better model for how these things are dealt with.

#### **4. What is the best governance framework to support well-functioning retirement villages?**

How well do existing laws and regulations protect over-55s from situations that may be experienced as exploitative or unfair, as well as demoralizing? There are gaps in legislation that provide opportunity for exploitation. It is difficult to understand how operator conduct such as verbal abuse, threats and intimidation can be evidenced in any other way, and why the burden of proof required by the regulator is higher than that required by the Tribunal, a body with the power to make legally binding orders.

The call from residents is for an Ombudsman. There is little protection for site tenants under these legislations, CAV very rarely enforce the RTA 4A laws, and most government departments will refer you on to Advocates for assistance. Should you require a determination on a dispute issue, the only alternative is taking that issue to VCAT. This is a lengthy and complicated process and can be quite stressful, and costly for the site tenant, where the site owners have the balance of power in their favour with their lawyers representing them in these proceeding.

#### **Recommendation 7.**

- a) Compulsory training is required for a mutually beneficial working relationship between residents and managers and to build understanding of older people and their needs in this area of lifestyle choice. It is necessary to adopt a similar course to the real estate training course conducted by the Vic Equal Opportunity & Human Rights Commissioner
- b) Tighten legislation in the protections of residents and then require CAV to enforce the RTA 4A laws already in place; what is the use of having legislation if it is ignored and not enforced?

**Shane McGrath (HAAG)** “If you hear from one person it may be a sad story but if you hear from 50 or more people it is not just an individual that has got a problem; it’s something systemic that need to be changed “

**Legislative Council Legal and Social Issues - Inquiry into the Retirement Housing Sector March 2016,** “ the Manufactured Home Industry has an imbalance of power as stakeholders seem to have the ear of our regulators.”