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Residential Tenancies Act review
Rent, bonds and other charges Issues Paper

This submission is a response by Housing for the Aged Action Group (**HAAG**) to the 'Rents, bonds and other charges' issues paper forming a part of the review of the Residential Tenancies Act (**RTA**).

HAAG would like to acknowledge that the submission was compiled with contribution from our members and that this forms the foundation of our response.

Introduction

The rental market currently reflects market conditions. Unfortunately for those on a low income rent based on market value can cause them severe housing stress, as was noted in the issues paper.

The median rent for Metropolitan Melbourne is currently $380 per week which is approximately 75% of the age pension including all supplementary income such as Commonwealth Rent Assistance (**CRA**).

In Victoria, overall, the median rent is $360 per week which is approximately 72% of the age pension including all supplementary income.

These calculations are based on a single person receiving the maximum age pension and CRA[1].

Market rent may, and often does, increase faster than the Consumer Price Index (**CPI**) or average wages and imposes particularly intense burdens on tenants who are reliant on income support, such as aged pensioners.

[1] DHHS, 2015

Many older tenants, in varying forms of rental housing, live on a fixed income. Increases in costs can put pressure on finances which can result in unsustainable long term tenure and housing stress.

Housing needs to remain affordable otherwise it can result in people relocating which may result in extra unforeseen costs that older people cannot afford. It must also be noted that affordable housing options are few and far between. Tenants needing to relocate puts pressure on an affordable housing system already in crisis.

Market rent reviews often result in rent increases above CPI, but in theory calculating increases based on market rates could also mean rent decreases at times. Unfortunately this 'theory' is never reflected in rent levels. HAAG has never heard of a tenant's rent being reduced. Rent always increases even where no improvements or maintenance have taken place.

According to the Index of Wellbeing for Older Australians, produced by the benevolent society:

- "The most important indicator (of wellbeing) – the one that influences everything else – is housing. It is difficult to understate the importance of building comprehensive strategies to address housing affordability among current and future generations of older people. Otherwise, we face a crisis of wellbeing among the growing number of older people on low incomes who don't own a home".
- "Older people in private rental, on a low income, are doing it toughest. With so much of their income spent on housing costs there is little to cover essentials like food, health, transport and energy costs. For some, it means being forced to move to areas with less amenities and poorer access to services".[2]

In age specific forms of housing there are added cost elements that need to be considered in addition to the general needs of those in the private rental market. Where the private rental market may contain a variety of income levels, housing specifically for older people is made up of a majority living on a fixed income. Caravan parks, residential parks, Independent Living Units (**ILUs**) and rental villages will also be addressed in this submission.

[2] Benevolent Society, 2016

3. What are the benefits of requiring landlords to provide greater assurance to tenants that they will meet their obligations under a tenancy agreement (for example, a landlord bond)?

The major benefits of requiring landlords to lodge bonds against which tenants could make claims for compensation and/or repairs would include:

- assisting landlords who are temporarily cash-poor to meet their obligation to maintain the rented premises in good repair,
- limiting the tendency for some landlords to take unreasonable lengths of time to carry out repairs, including repairs ordered by the Victorian Civil and Administrative Tribunal (**VCAT**),
- reducing the difficulty and complexity, and increasing the timeliness, of debt enforcement mechanisms for tenants where a judgment has been made in their favour,
- reducing the incentive for recalcitrant landlords to ignore claims by their tenants on the basis that the tenant is unlikely to be able to collect any judgment,
- increasing incentives for tenants to seek to enforce their rights by increasing the likelihood of a tenant with a valid claim collecting any judgment in their favour, and;
- reminding the parties to a tenancy agreement that they are both, in a practical sense, parties to an agreement. That is, that each party has both rights and obligations the breach of which is likely to have consequences, and that the tenancy is not a unilateral flow of cash from the tenant to the landlord.

4. How important is it to limit the amount a landlord can charge as bond?

Bonds tend consistently to the upper limit of the amount a landlord can charge. It is very unusual, even in social housing properties, for the bond to be less than a month's rent. This reflects a serious disparity in bargaining power between tenants and landlords. Only in very exceptional circumstances would a tenant be able to negotiate a lower bond amount. That is, in practice, section 31 of the RTA has tended to prescribe a bond amount rather than a maximum around which parties could negotiate. HAAG believes that the removal of this limit would inevitably lead to landlords charging higher bonds. Indeed, it is increasingly common for landlords to demand higher bonds for properties where the rent exceeds the obsolete limit set out in section 31 of $350 a week.

If landlords as a group begin charging higher bonds, this will obviously increase barriers to accessing private rental properties, in particular for low income tenants. Increases to the costs associated with moving will also continue to produce disincentives for tenants to exercise their rights, by intensifying the financial strain associated with eviction in circumstances where retaliatory evictions remain inadequately regulated.

We are also concerned for the effect an increase on bond amounts would have for agencies, including HAAG's Home At Last service currently assisting low income

tenants to pay their bonds. The Housing Establishment Fund (**HEF**) and other brokerage budgets for services that help to house tenants who are homeless or at risk of homelessness are already seriously overstretched. Monthly HEF allocations are almost always exhausted before the end of the month, meaning tenants frequently can not obtain HEF payments if they require them late in the month. Increasing the amount charged as a bond would either strain these budgets further, meaning fewer tenants would receive this assistance, or require a concomitant increase in funding for those agencies.

Some of the tenants most disadvantaged by any increase would be tenants working for low or part-time wages and not receiving income support, as they are unlikely to qualify for HEF payments or Department of Health and Human Services (**DHHS**) bond loans but still lack adequate financial resources to deal with any increase in up-front costs or payments for private rental. In our experience, this category includes many older workers who are not yet eligible for the aged pension but face significant age discrimination preventing them from accessing full-time or well-paid employment.

13. What are other critical issues (if any) relating to bonds that have not been captured?

The RTA does not allow the payment to the landlord by agreement of any part of a bond provided by the Director of Housing. A landlord who wants to claim all or part of such a bond must apply to VCAT. The apparent goal of this requirement is to prevent a situation where indifferent tenants, whose own money is not at stake, cede the bond to the landlord, and to give the Tribunal oversight where tenants themselves are unwilling to contest a claim. However, the oversight given by VCAT to bond claims made in the absence of the tenant is perfunctory, at best; and the imagined tenant who doesn't care if the Director gives his bond back is a rare bird. Most eligible tenants are well aware that they will require other bond loans, and/or wish to enter public housing in future, and that they will need to pay back any amount owing to access further support from DHHS.

In practice, these provisions make it harder for tenants and landlords to negotiate reasonable, mutually acceptable outcomes. Where a landlord might have accepted a moderate amount by agreement they may make larger ambit claims where they will have to make a VCAT application anyway. The system incentivises landlords to make large claims, and as we know tenants are hesitant to attend VCAT, this may tend to result in the payment out of larger amounts from DHHS bond loans than would be the case if the parties could negotiate an outcome. (Moreover, we have heard from some tenants that their applications for private rental properties have been declined because they intended to rely on DHHS bond loans, presumably because of the additional difficulty for agents and landlords in claiming against those bonds at the end of the tenancy.)

Generally, we are also concerned that the low-cost nature of VCAT as a jurisdiction tends not to discourage excessive claims by landlords below the $10,000 threshold for claims under the Act. In other jurisdictions, the prospect of costs orders ensures

that claims are not unreasonably inflated but costs orders in the Residential Tenancies List are very unusual, and costs - at least tenants' costs - are so modest as to fail to constitute a serious disincentive. This means that a landlord entitled to make a modest claim at VCAT will often see no reason not to claim as broadly as possible for as much as possible, as VCAT will, at worst, reduce any award to the amount to which the landlord is entitled, and just as likely will award the full claim (in the event the tenant fails to attend, which is common).

The worst results of this situation are the systemically excessive 'Maintenance Claims Against Tenants' (**MCATs**) routinely made against former tenants by the Director of Housing, who generally seeks to fully restore vacated properties and then bill the tenants, without any serious consideration by the Department as to whether the costs relate in any way to the tenant's conduct. HAAG would like to see the limit for claims under the RTA substantially reduced, or for the Act to otherwise discourage excessive claims, perhaps by expanding VCAT's discretion to strike out unreasonable claims.

17. Why might it be important to limit how much rent can be charged in advance?

The same points made in response to question four, above, are relevant here. In practice, the limit on rent in advance set out in the Act has not functioned as a limit defining the scope for negotiations, but a prescribed amount of rent in advance across the private rental market. This strongly suggests that landlords will seek to charge as much rent in advance as they are able, and of course it is in their interests to do so.

Increased amounts of rent charged in advance will, again, disproportionately affect low-income tenants, waged or unwaged, and increase the barriers they face when accessing private rental, as well as requiring increased funding to agencies that provide HEF and other brokerage funds to keep pace with the increases. Low-income tenants who are able to negotiate lower up-front rent amounts will find it harder still to assert their rights, as the costs associated with accessing alternative accommodation in the event of forced exit will be increased.

23. What is an appropriate notice period for a rent increase?

In at least some circumstances, rent increases constitute de facto notices to vacate for tenants who will not be able to afford the increase. This includes circumstances where landlords intentionally use the increases in this way - perhaps to circumvent the no-reason notice period, or where a no-reason notice would be susceptible to challenge on the grounds that it was retaliatory, as well as those where the ongoing adjustment of market levels simply makes the property unaffordable for a tenant.

Such circumstances are particularly onerous for older tenants who have rented a property for longer periods (10+ years) from the same landlord, only for that landlord to pass away and their children to inherit the property. This is, in HAAG's experience, a surprisingly common situation. Frequently in such circumstances the

long-term relationship has kept the rent substantially below market rates, and an increase to market levels can represent a very substantial, and unsustainable, adjustment (I believe the largest such increase we have seen is 80%).

In view of the potentially tenancy-ending impact of any given rent increase, HAAG believes the notice period should be sufficient to allow tenants so affected a reasonable amount of time to relocate. In our view, as recognised by the Parliament in setting the notice period for no-reason notices to vacate, this period is 120 days.

22. How effective is CAV's rent assessment process in resolving concerns about a rent increase?

First, HAAG restates its position that allowing the market to set rents has proven to have unacceptable consequences for older renters, as well as other low income tenants and indeed, tenants generally. Market rents are consistently well above the level that causes rental stress for older renters, routinely compelling older renters to go without necessities such as medication or heating during winter, adversely affecting their physical health. While the current issues paper expresses concerns that direct intervention to limit market rents will have adverse effects on housing supply, we submit that market rent itself constantly proves itself to be a system of endemic rental stress, routinized eviction for arrears, impossibly overstretched homelessness services, public housing waiting list times so long as to be simply abstract, et cetera.

That said, even if market rent is to remain the only limit on rent increases, the process currently used by Consumer Affairs Victoria (**CAV**) is inadequate, structurally biased in favour of higher rents, and has never been shown to produce accurate results. CAV inspectors do not, for example, analyse or rely upon knowledge of the local market to determine the market rent – they ask local real estate agents, i.e., landlords' representatives. Real estate agents derive part of their income from fees that come as a percentage of rent, and so have a direct economic interest in high rents, even independent of the interest that their landlord clients hold. No CAV inspector, to my knowledge, has ever contacted a local tenant representative to seek a balancing perspective on market rent. This introduces a systemic distortion in the assessed rents. If CAV adopted the opposite approach – only asking tenants and their representatives what was a fair market rent for the property – you would obviously see the opposite distortion.

26. If you are a tenant who has paid their rent late, what is the reason for your late payment, and how late has your payment been?

HAAG's Home At Last service supports a significant number of tenants who have paid their rent late. The major reason tenants pay their rent late is the weak regulation of rents in the private rental market, and the corresponding mismatch between amounts charges as rent and the incomes of tenants relying on low-wage and especially intermittent contract work and/or income support. Again, these are disproportionately older tenants.

Specific reasons our clients have been late paying rent have been wide-ranging. These have included funeral expenses for loved ones; temporarily increased pharmaceutical costs for tenants following the January 1 reset of the Pharmaceutical Benefit Scheme safety net; unexpectedly large utility bills, often due to inadequate appliances or insulation in the rented premises; delays accessing Centrelink benefits; and insufficient hours for contract workers. We have even seen one landlord deliberately refuse to collect rent, which had previously been paid in cash, in order to produce arrears as a pretext for eviction following a dispute - although this is obviously an exceptional situation. Generally, for tenants on low incomes, already experiencing significant rental stress, any unexpected expense may make it impossible to avoid late rent payment.

27. What issues might arise from the fact that the late payment of rent (i.e., late by less than 14 days) is not currently a reason to allow a landlord to issue a breach of duty notice?

The 'issues' arising from this are that tenants enjoy a very modest level of flexibility with regard to the payment of their rent, and that landlords cannot evict tenants for late payment of rent unless there is evidence either of prospective or actual financial loss to the landlord, or of an ongoing and significant inability of a tenant to pay rent on time. But these are not 'issues', these are features of a reasonable system for balancing parties' interests in the real world. The alternative to this would be that a tenant whose rent was slightly late three times (or twice, if the landlord obtained a compliance order requiring payment on time) would face eviction. VCAT does not have discretion in dealing with notices to vacate based on breaches of duty (i.e., under sections 248 or 249) to adjourn the hearing if arrangements can be made to avoid financial loss to the landlord, which is currently common practice with notices to vacate for rent arrears. The Tribunal would have no option but to provide the landlord with a possession order if they could prove even trivial breaches which had not occasioned loss to the landlord.

We also note here that landlords generally consider their own obligations to be somewhat (sometimes extremely) elastic, while often not extending the same consideration to tenants. For example, the RTA allows up to 14 days to carry out a non-urgent repair, and in practice the waiting time can often be significantly longer without recourse for the tenant. Tenants may suffer significant reductions in amenity awaiting such repair, which are very unlikely to be compensated. But the allowance of prescribed time periods before the failure of one party to carry out an obligation becomes compensable, or allowing the termination of a tenancy agreement, is a necessary mechanism for tenancies to function.

The current act defines duties fairly narrowly with good reason. Repeated breaches of a duty, even where the individual breaches are quite minor, can be grounds for the fairly rapid termination of a tenancy. While breaches of duty may be annoying to the party to whom they are owed, they are not breaches *because* they are annoying but because they fundamentally attenuate the interests of a party to a tenancy agreement, or at least a party with an interest in the situation. If a tenant

repeatedly damages the rented premises, this is obviously and immediately detrimental to the landlord's interests. If a tenant repeatedly causes nuisance to their neighbours, there is immediately obvious detriment to that neighbour and it is reasonable to offer a remedy to the landlord. If a tenant's interest is slightly late, this may be annoying to their landlord and, in particular, to their real estate agent, but as a rule, no interests are substantively harmed.

Moreover, the effect of a breach notice is to offer a remedy where a breach is not remedied within 14 days. There is already a remedy for a landlord where a tenant fails to pay late rent within 14 days. It is a notice to vacate, which is very likely to also give rise to a compensation claim. The effect of allowing breach notices for minor late payment would be to allow landlords to serve valid 14 day notices to vacate - a very serious and abrupt method for ending a tenancy - to tenants who had not caused them any financial loss or serious detriment.

The provisions with regard to rent arrears in the current Act are designed to prevent the eviction of tenants for minor late payments that do not occasion financial loss to the landlord, including providing specific powers for VCAT to order payment plans that allow for tenancies to continue while protecting landlords' interests.

28. What are the arguments for or against allowing a landlord to claim compensation for incurring financial losses because rent has been paid late?

Tenants who have paid rent late are, almost by definition, experiencing financial stress. Where they seek to maintain the tenancy by paying off the amounts owing, the increased debts would make this more difficult and, again, demand increased funding to agencies providing HEF and other brokerage funding to sustain tenancies. This would certainly increase the likelihood of eviction for tenancies that might otherwise have been sustained. Given the costs associated with advertising, letting fees, and so on, it is not obvious to us that this would even be in the overall financial interest of landlords themselves.

Where tenants have been evicted for rent arrears, they are likely to lose most or all of their bonds to cover the arrears and are at high risk of homelessness. They are very unlikely to have the financial resources to access new private rental accommodation. These circumstances would obviously only become more difficult if the landlord could also claim compensation for other losses based on the late payment of rent.

That rent may not always be paid exactly on time is not a problem the RTA needs to rectify but a simple fact of life, particularly for landlords who rent to tenants with low incomes. The costs that may flow from this should be fairly minor for landlords who have sensibly organised their finances. In any case, they are a cost of doing business as a landlord, as late payments are common in all kinds of businesses. Tenants are not automated rent dispensers, and landlords should not be encouraged to see them this way. If landlords could claim against such losses, it would incentivise the landlords to take on more precarious and delicately leveraged mortgages and financial positions. This would not only make it more difficult for

tenants experiencing rent problems to negotiate a satisfactory outcome, but would tend to lead to greater financial losses for landlords.

Caravan Parks

People choose to live in a caravan park for many reasons, including affordability and flexibility compared to other forms of housing.

"The caravan park option has provided rare access to affordable housing for thousands of people, especially retirees on low incomes, divorced men and women clutching half the proceeds of a house sale, and older single people ".[3]

HAAG is unsure whether bonds are charged as common practice in caravan parks. For those that rent their unit and their site (renter/renters) it may be common to pay a bond although because many tenants are on low incomes their ability to pay would be limited. HAAG's view on bond payments for renter/renters is line with general tenancy arrangements, as already outlined in our submission above.

Generally for those that own their van/dwelling and rent the site on which it stands (owner/renters) a bond is not charged, due to the cost of purchasing the dwelling. HAAG believes that owner renters in caravan parks should not have to pay a bond.

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

"Stakeholders, residents and park owners and managers all cited failure to pay rent as the most frequent cause of loss of housing or eviction from caravan parks".[4]

Given many caravan parks residents have lower incomes, rent increases should be calculated according to CPI which is then reasonable for both parties. Park operators often cite an increase in their costs which requires them to increase the rent. If the CPI formula was used then the park's overall cost increases would be reflected more appropriately in the increase being passed on to residents. HAAG also believes rent increases in caravan parks should be annual, retaining the 60 day notice period and prescribed form.

Written agreements should be mandatory and provide a clear purpose for the rent. This is important in the event that residents feel they are not receiving what they are paying for, which often happens. If a clear purpose and explanation of rent was provided it could more easily be clarified in the event of a dispute. A clear breakdown of the rent would also assist if a resident was seeking a rent reduction or rent assessment.

[3] Horin, 2013
[4] Wensing et al, 2003, p45

Rents in caravan parks are generally reasonable compared to other forms of rental housing, yet residents often express concern regarding how rent increases are calculated. Very often increases appear excessive in relation to the lack of or limited improvements in services provided by the operator, such as communal maintenance and utilities. Although the process to have a rent increase investigated through CAV is fairly clear, often the responses provided to residents by CAV inspectors, and the criteria utilised for assessment, appear inappropriate or insufficient to provide for a reasonable evaluation.

The assessment criteria needs to take other parks into account less and focus more on whether improvements were undertaken in the park over the previous 12 months, whether services are being appropriately provided within the park, such as the maintenance of common areas and facilities, location and access to external services and the hardship or disadvantage an increase might have on a pensioners income affordability.

HAAG has observed that notices to vacate for rent arrears are often used by park operators. Many permanent caravan park residents are on fixed incomes, such as the Disability Support Pension (DSP) or Age pension. Falling behind in rent payments is often unavoidable due to other costs incurred by residents, such as medical costs.

HAAG has already presented its views on the 14 day notice to vacate for rent arrears, which is also applicable to caravan park residents who rent both their dwelling and the site.

It must be noted though that for owner/renters having an extremely short timeframe towards potential eviction can cause severe stress due to the added requirement of moving their dwelling. Moving the dwelling may even be impossible, both physically and financially. This is especially applicable to those whose dwellings are more permanent, such as converted vans with attached annexes.

Consideration needs to be given to allow a more flexible approach in these circumstances, providing as much opportunity as possible for residents to get back on track with rent payments, remembering that often arrears can be unavoidable due to unforeseen circumstances.

Residential Parks

"For many older people, the option to live in a residential park represents an affordable lifestyle choice for retirement. Many retired people will invest their superannuation or the proceeds from the sale of their house in a small home".[5]

Residential parks are marketed mostly at people over 55 years of age generally offering a more affordable retirement lifestyle. Unfortunately, *"this affordable style of living is under attack. Park owners, frequently big companies, are sick of being*

[5] Law and Justice Foundation, 2004

providers of low-cost housing, and sick of the constraints on their ability to develop their sites and maximise profit".[6] More site tenants are now concerned about the long-term viability of this housing in relation to the ever-increasing costs and complex financial arrangements.

HAAG does not know of a bond ever being paid in a residential park. The cost of purchasing the dwelling is significant and replaces the need for a bond. Therefore the legislation should make it clear that no bond be payable for site tenants.

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

Case study:
One small group of site tenants are currently challenging their park operator for a rent reduction due to a reduction in the number of caretakers.
The park is being built in stages and currently stage 3 of 4 is being constructed. Once all stages are complete there will be approximately 230 sites in the park. When the site tenants originally moved in there were 4 caretakers looking after the park. A few months after entering the park this number was reduced to 2 and there was a significant reduction in overall service felt by the site tenants as a result.
Following a rent increase in 2015 some site tenants felt that the general maintenance and management of the park had weakened and they began to question why the increase was applied. The residents felt there was a direct correlation between the reduction in staff and the reduction in service.
HAAG assisted the residents to try and negotiate with the management but the park operator believes that a reduction is ludicrous because the RTA does not specify the number of caretakers required, their other parks have only 2 caretakers and there was never an intention to retain 4 caretakers, although this was not communicated to the site tenants in the beginning.
The site tenants are currently working towards a VCAT application in regards to this matter.

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

Site fee increases generally seem to occur annually although there have been instances of site tenants receiving two increases a year, as the RTA allows. Market rent reviews are difficult to assess as residential parks are often located far from other 'similar' housing types.

[6] Horin, 2013

Although there is a provision in place allowing site tenants to seek assessment from CAV should they believe their increase is excessive, it rarely works in their favour and often the assessment is made using inappropriate comparisons. The assessment criteria needs to take other parks into account less and focus more on whether improvements were undertaken in the park over the previous 12 months, whether services are being appropriately provided within the park, such as the maintenance of common areas and facilities, location and access to external services and the hardship or disadvantage an increase might have on a pensioners income affordability.

Case study:
One group of site tenants received a rent increase they felt was excessive so they decided to seek a rent assessment. The CAV inspector came out to the park and following his inspection he provided the site tenants with a report stating the rent was not excessive. Unfortunately his conclusions were drawn from some comparisons that were inappropriate.
Rather than just considering other residential parks he included a retirement village in his report, and this aided him in deciding that the increase was not excessive.
It appeared he did not understand the difference between the two forms of housing and the fact that fee models are completely different. Although the site tenants could have taken the matter to VCAT and argued the CAV report was undertaken incorrectly they did not feel confident that VCAT would take their word over CAV's, which is understandable as a challenge to an increase is much more effective with a supportive CAV report.

Site fee increases should be legislated to occur annually and according to CPI or 5%, whichever is the lessor, retaining the 60 day notice period and the prescribed form.

Case study:
HAAG was contacted by a site tenant who had received a letter from the park operator stating that the site fees were to be increased, effective in 24 hours. It was not o0n a prescribed form and did not provide the appropriate notice period.
Then two days later the site tenant told HAAG another letter was received from the operator apologising for the short notice period and then stating the increase would be effective 14 days from the date of the letter.
The site tenant understood the operator was required to provide a prescribed form and 60 days notice but she did not want to challenge him as she already felt she was targeted as a trouble maker by the management.

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

Residential parks also often include many other charges, which can cause the financial complexity and stress.

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

DMF's are not currently regulated by the RTA. The majority of site tenants are pensioners and affordability is a key reason why people choose this type of housing, yet it is becoming a less affordable long term option due to ever rising costs. This highlights a need to consider more regulation for additional costs charged by operators. This is something that could be well addressed under separate legislation.

The purpose of DMF's is unclear and currently the percentage charged ranges from 15% to 40%. HAAG believes DMFs should not be charged in this sector. Currently the DMF is argued to enable operators to charge less in the initial purchase of the dwelling. This has never been proven to be true and is doubtful given the costs now evident to purchase a new home in a residential park, which for new homes can range from $300,000 to $450,000. On this basis HAAG believes DMFs are not appropriate.

That being said if a clear purpose was provided, that seemed reasonable, then HAAG would consider a 10% cap to be a more rational DMF formula.

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

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

The purpose of administration costs is unclear, especially in light of sales commission. It appears operators might be doubling up their charges and without clear explanations site tenants are unable to clarify this and are losing large portions of their money upon exit.

Only one charge, either a sales commission or an administration charge, should be payable upon exit and the percentage should be comparable to those charged by

independent agents. It must also be made clear that it can only be charged if the park acts as the selling agent for a site tenant.

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

In a regular home sale it is at the discretion of the seller whether they choose to refurbish prior to sale. Otherwise the home is sold as is and the buyer makes changes once they move in. This is how it should be in residential parks as well. It should be up to the site tenants whether they choose to spend extra money to improve the home for sale. Otherwise exit costs can very quickly add up and leave site tenants with significantly less then what they originally purchased the dwelling for.

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

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

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

If a site tenant must vacate their unit, especially due to illness, death or the need for advanced care, there should be a much clearer limit and formula in the continued payment of site fees. Currently there is a legislated limit to liability but it is vague, contained in an obscure section of the RTA and is often ignored.

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

There should also be an express 'duty to mitigate' provision for site owners to ensure they are taking the necessary and reasonable steps to find a new site tenant. This could include advertising, engaging an agent and the number of people shown through the unit. Currently the law provides a disincentive for site owners to find a new site tenant because they have a guaranteed income. By limiting this and

ensuring they must be able to prove their efforts it may encourage site owners to sell more quickly.

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

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

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

Independent Living Units

Independent Living Units (**ILUs**) are self contained units built specifically for older people with low income and low assets. ILUs continue to be provided as a mostly affordable form of housing specifically for older people although these protections could be more appropriately legislated.

According to McNelis (2004) 42% of ILU residents were aged 80 or over.[7] If considered in relation to other forms of low income older person specific rental housing, of which public and community housing are major forms, in 2003 ILUs formed "25 to 30 per cent of all stock specifically constructed for older persons".[8]

ILU tenants are a more vulnerable group and "older people are one of the least mobile population groups".[9]

Rent affordability and protection are important for ILU tenants. ILUs are especially catered towards low income pensioners and therefore need to provide a lower than average rent to ensure tenants can sustain their tenancies.

Usually bonds are not charged by ILU providers in recognition that most people will not have the money to pay. For this form of housing bonds should be waived to acknowledge the limited income levels of those who would access it.

[7] McNelis, 2004, p49
[8] McNelis, 2004, p13
[9] Jones et al, 2007, p43

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

ILU tenants are eligible for rent assistance as well so based on $350 a fortnight in rent, for a single person in receipt of the full age pension (including rent assistance) they pay approximately 35% of income. ILU rents can also often include utility costs, where utilities are not separately metered. Taken into account this reduces the overall cost of living for ILU tenants. Although some ILU tenants may be experiencing housing stress, or may be on the cusp of it, it is much more affordable and appropriate then the private rental market.

Written tenancy agreements should be provided to all ILU tenants and should provide a clear explanation of the purpose of the rent. Added elements will need to be included, that differ from a private rental arrangement, such as: communal maintenance and facilities and included utilities. With a clear explanation provided it makes it easier for tenants to know what they are entitled to receive and to request a reduction in rent if those services are not provided.

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

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

The RTA should only allow for annual increases and HAAG members believe the current 60 days notice period is reasonable and should be retained, along with the prescribed form that operators must use.

Rental Villages

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

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

A rent that is set at 85% of income plus 100% rent assistance results in housing stress for tenants and can only be sustainable if someone has savings to draw from.

Given this form of housing is provided for older people rent should be set at a more reasonable level. Other services, such as the provision of meals and linen service, should be set as separate costs and should only be payable if utilised.

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

Rent levels are higher in rental villages due to service provision. Currently the 'rent' paid includes rent and services received. If tenants are away or in hospital for a short time their rent is not reduced to take into account the services not utilised during that time. HAAG believes rent and services should be two separate payments. When the two are combined it can be difficult to decipher which proportion is rent and which is for services.

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

Many residents over the years have expressed that the quality of food is terrible in rental villages, with some unable to eat the meals provided due to dietary requirements that the village will not cater for. Therefore services should only be paid for if the resident chooses to receive them.

Although services rendered is a consumer matter if an older tenant wanted to pursue a course of action to challenge service provision they would have to understand consumer law and make an application under the civil claims list. This is completely inappropriate, time consuming and complex. Considering most tenants will not even act under the RTA the odds of taking any matters further under consumer law are slim to none. Tenants should be well protected and have clear and simple avenues to challenge costs being charged if they feel they have reason to.

The payment of bonds depends on the operator. Sometimes bonds are paid but not registered with the RTBA. Often no receipts are provided either. Sometimes bonds are not paid at all.

Case study:
One rental village in particular contacted HAAG when they began experiencing a number of issues mainly with the service provision at the village. At a residents meeting it emerged in discussion that many people had paid a bond but had no receipt to prove the payment had been made. The village had a manager but many of the units were owned by investors who paid the management to look after matters for them, including bonds and rent. The manager explicitly told people they did not register bonds with the RTBA.

At the point of departure one tenant contacted HAAG to try and retrieve her bond. The only evidence she had was her bank statement and an email from the manager confirming receipt of the payment. (This matter is still being negotiated).

Given the age specific nature of this housing rent increases should be calculated according to CPI and should be given annually with the retained 60 day notice period and prescribed form. Many rental village operators do not provide the correct rent increase form. They appear to work outside of the regulatory framework and due to the aged and frail nature of the tenants many will choose not to challenge them, or will not know they can.

Case study:
One tenant received a letter stating she was over $900 in rent arrears and the village was demanding that she pay it straight away otherwise she would be evicted. HAAG looked into the matter further and found it was due to a rent increase that had occurred a number of months earlier. The tenant had not altered her Centrelink payments to reflect the increase and the manager had failed to address the matter when it first occurred.
On further investigation HAAG found no valid rent increase notice had been provided and contacted the operator to tell them the tenant owed no rent as there was no valid rent increase. It came to light that many of the tenants in the village were in arrears, for a variety of reasons, and HAAG was unable to find out how many may have paid arrears they did not owe because of an invalid rent increase. No doubt a few had due to the threats being made if they did not comply.

Conclusion

Older tenants are a more vulnerable group due to their often limited and fixed incomes. Affordability is an important element for older people to ensure they have secure and sustainable housing, as well as a high level of wellbeing.

The current private rental market does not sufficiently provide for this target group and therefore changes, such as limiting rent increases and providing more flexibility in the system for people on a fixed income, need to be seriously considered in this review.

The needs of tenants in age specific housing needs to be considered separately again, especially where eligibility criteria specifically relates to people on low, fixed incomes.

If the rental market is to become a viable housing option for older people significant changes need to be made to allow for this to occur.

Although this review has limited scope no discussion about rent and affordability can occur without considering the impact other policies may have on this sector. This has to be a holistic conversation and cannot occur in isolation. Any decisions made during this review should be made taking into account other reviews currently being undertaken, as mentioned in the issues paper.

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