



30 June 2016

[By email: [LSIC@parliament.vic.gov.au](mailto:LSIC@parliament.vic.gov.au)]

The Secretary  
Legal and Social Issues Committee  
Parliament House, Spring Street  
East Melbourne VIC 3002

Dear Committee,

### **Parliamentary Inquiry into the Retirement Housing Sector**

The Consumer Action Law Centre (**Consumer Action**), Council on the Ageing Victoria (**COTA**), Housing for the Aged Action Group (**HAAG**), Justice Connect (Seniors Law) (**Justice Connect**) and Residents of Retirement Villages Victoria (**RRVV**), welcome the opportunity to contribute to the parliamentary inquiry into the retirement housing sector.

Our respective organisations work both independently and jointly to further the interests of older Victorians across the full spectrum of retirement housing. As a coalition of both membership and non-membership based policy, advocacy and service delivery organisations we are well informed on the substantive issues the inquiry has been established to address.

While we have made independent submissions on behalf of our own organisations, we also make this joint submission to highlight those issues on which we wish to express our strong mutual support.

The parliamentary inquiry represents a unique opportunity to progress much needed reform of Victoria's retirement housing sector. There is an urgent need to address financial exploitation, raise retirement housing industry standards, and provide much needed access to justice for Victoria's retirees. This need has never been greater, and will continue to grow as the population ages. Without structural reform now, the systemic issues we currently see will continue to worsen – leaving many vulnerable Victorians financially exposed, caught in unfair or unsuitable living arrangements, and without access to justice. Accordingly, we look forward

to a full and thorough inquiry, widely consultative, providing the opportunity for a broad range of older Victorians to make their grievances heard.

As a coalition we strongly urge the committee to consider:

### **1. The establishment of a Retirement Housing Ombudsman (RHO)**

The Victorian Civil and Administrative Tribunal (**VCAT**) provides an expensive, lengthy and intimidating, court-like approach to the resolution of retirement housing disputes. These factors work against VCAT as an effective dispute resolution forum. Running a substantial matter through VCAT is simply beyond the financial capacity of most (if not all) retirees, and the process itself can be overwhelming.

As a result, many choose not to pursue legitimate grievances through VCAT, leaving those grievances unchallenged and largely unreported. This is an unacceptable situation, and ought to be addressed through the establishment of an industry funded Retirement Housing Ombudsman (**RHO**) service, to provide free, fair and binding determination of retirement housing disputes, across the full spectrum of retirement housing types.

The Financial Ombudsman Service (**FOS**), the Telecommunications Industry Ombudsman (**TIO**) and the Energy and Water Ombudsman Victoria (**EWOV**), provide effective models on which an industry funded RHO service could be based. Providing an effective forum through which Victoria's retirees could access justice in retirement housing disputes would be a significant step forward for the sector. Establishing an RHO would not only meet a strong moral imperative, but would also lift industry accountability and management standards, and improve consumer confidence in Victoria's retirement housing sector.

### **2. Regulation of the Deferred Management Fees (DMF) business model**

DMFs were first used as a mechanism to enable retirees to buy a right to occupy a unit for 20-30% less than the unit's freehold market value. The owner could make the difference back upon the next sale of the unit, through the departing retiree's accrued fee. Since they first appeared approximately thirty 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.

This premium cost of retirement village and park living is generally justified by operators as the cost of making a lifestyle choice. Residents gain access to services, facilities and community through their choice to reside in a retirement village, and bear significant costs in order to do so. While the value proposition of this arrangement is questionable (and often appears to be illusory), the DMF model is now well entrenched in the industry.

The DMF business model is open to exploitation by operators, and can deliver extremely poor value. Depending on how it is applied, the DMF also means that consumers are unable to ascertain the true cost of the arrangement they are buying into. This makes informed consumer choice difficult, if not impossible.

The DMF model also contributes to common misconceptions around retirement housing, with many retirees operating under the false belief that they are buying a property - rather than a licence to reside in a property.

Taken together, these factors lead to the conclusion that the DMF model must be reformed and regulated to provide greater clarity around pricing, and ensure that older Victorians understand the arrangement they are entering into.

### **3. Greater clarity in governing legislation and contracts**

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.

The lack of clarity about which legislation applies to what accommodation types directly causes (or at least contributes to) many of the problems faced by residents of retirement housing. While the *Retirement Villages Act's* definition of 'retirement village'<sup>1</sup> should generally determine which legislation applies, it can be very difficult to determine whether a development meets that definition - especially in the case of not-for-profit villages. As a result, seemingly very similar developments can be governed by different legislation and the residents in those developments will enjoy different rights.<sup>2</sup>

Reform is necessary to clarify the legislation that applies to various forms of retirement housing, with the intent to reduce contractual misunderstandings and disputes.

We are aware that the overlap of the *Retirement Villages Act 1986* and the *Owners Corporation Act 2006* is currently under review by Consumer Affairs Victoria, and look forward to reforms that may result from that process. At the same time, we believe that the *Retirement Villages Act 1986* requires full review. Through this process the legislative demarcation between various forms of retirement housing could be clarified, and more effectively cross-referenced.

In addition, basic guidelines should be developed to ensure that contracts are expressed in plain English and meet a certain standard of readability. While the *Retirement Villages (Contractual Arrangements) Regulations 2006* (VIC) establish prescribed terms and layouts for management and residence contracts, they do not do so for lease agreements and contracts of sale. Further, consideration should be given to the establishment of a free, independent advice service to assist retirees in understanding their housing contracts prior to committing to purchase or entering a loan-lease agreement.

It is important that the unique potential vulnerability of the retirement housing consumer base is taken into account. Consumers include older citizens who are often going through a traumatic and upsetting time of their lives as they leave their family home to enter a village or other retirement living community. They should not be expected to navigate complex and lengthy legal documents, (often without any legal assistance), in order to make significant life decisions. Made poorly, those decisions can have a disastrous impact on their lives.

---

<sup>1</sup> *Retirement Villages Act 1986* (Vic) s 3.

<sup>2</sup> Council on the Ageing Victoria, 'Submission to: *Options Paper: Tenancy Policy Framework for Residential Parks*', 2009, available at: [http://cotavic.org.au/wp-content/uploads/2011/01/microsoft\\_word\\_-\\_residential\\_parks\\_options\\_paper\\_final\\_july\\_09\\_web\\_version.pdf](http://cotavic.org.au/wp-content/uploads/2011/01/microsoft_word_-_residential_parks_options_paper_final_july_09_web_version.pdf)

#### 4. Training and qualification requirements for retirement housing employees

Victoria's retirement housing sector currently requires only very basic qualifications for managers of retirement villages and residential parks.<sup>3</sup>

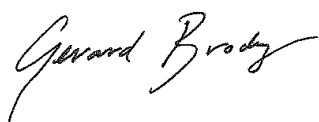
Breakdowns in communication, loss of trust and hostility between residents and managers is common, often leaving residents feeling powerless and intimidated in their own homes. Disputes between residents and managers can quickly become personal and intractable. Bullying is not uncommon, and often goes unreported. The potential for factions to form amongst residents, and for residents committees to become dominated by cliques or powerful personalities can lead to ongoing frustration, disempowerment and resentment. This can leave the most vulnerable residents - who may be alone and in poor health - feeling unrepresented and unable to air legitimate grievances.

Professionalising the role of village and park managers would be an important acknowledgment of a challenging, demanding and unique role. A Certificate IV qualification under the Australian Qualifications Framework<sup>4</sup> could be established, and a register of professionally qualified village and residential park managers maintained - with a requirement that they refresh their qualification through ongoing professional development.

This measure could play a powerful role in lifting management standards across the industry, and would help to re-set the power imbalance that often exists between managers and residents.

If you require any further information in relation to this submission, please contact Zac Gillam at Consumer Action Law Centre on 03 8554 6912 or at [zac@consumeraction.org.au](mailto:zac@consumeraction.org.au).

Yours sincerely,



*Gerard Brody*  
Chief Executive Officer  
**CONSUMER ACTION LAW CENTRE**



*Jack Sach*  
Chief Executive Officer  
**COTA VICTORIA**



<sup>3</sup> Operators generally require managers to hold first aid qualifications.

<sup>4</sup> <http://www.aqf.edu.au/>

*Shanny Gordon*

*Shanny Gordon*  
Retirement Housing Information Worker  
**Housing for the Aged Action Group Inc.**



*Deborah Di Natale*

*Deborah Di Natale*  
Acting Chief Executive Officer  
**JUSTICE CONNECT**



*Lesley Menzies*  
President  
**RESIDENTS OF  
RETIREMENT VILLAGES VICTORIA**

