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Submission to the Review of the Retirement Villages Act 1986

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The Tenants Union of Victoria welcomes the opportunity to comment on the Retirement Villages Act 1986 Discussion Paper. The TUV is a specialist community legal centre that provides free information and advice to residential tenants, rooming house residents and caravan park residents across Victoria. In the year 2000/2001 the TUV assisted 33,865 private and public tenants in Victoria, and 980 rooming house residents. While our core business relates to advocacy for tenants and residents under the Residential Tenancies Act 1997 (RTA), we are interested in commenting on the Retirement Villages Act 1986 (RVA) due to our contact with residents of caravan parks where the operators of these parks are specifically targeting retirees as a market. We believe that the protections afforded to residents of this type of accommodation are inadequate at this stage, and we aim to offer some solutions through this paper.

Caravan parks provide an accessible permanent housing option for low-income retirees who are able to live independently. The issue of legislative protection for retirees living in caravan parks is complex because the two pieces of legislation that relate to this situation, the RTA and the RVA, are inadequate in their current form to meet the needs of this particular tenure type. Loopholes in both pieces of legislation mean that some caravan parks targeted at retirees are excluded from any form of legislative coverage outside contract law. The RVA requires one resident to have paid an "ingoing contribution" to the operator in order for the premises to be considered a retirement village for the purposes of the Act. The RTA requires that there be at least one movable dwelling in a caravan park for it to be considered a caravan park for the purposes of the Act. The problem with the RTA lies in the lack of clarity of the definition of a movable dwelling.

In addressing the issue of legislative coverage for retirees in caravan parks, the relative merits of the RVA need to be compared with the RTA. While the RVA ensures security of tenure for residents of premises deemed to be retirement villages (albeit through the ability of residents to negotiate individual contracts), the RTA provides a clear and user friendly framework for addressing concerns on everyday issues related to quality of life, such as the state of repair of the premises, cleanliness of common areas, privacy and rent increases. Another significant advantage is the independent dispute resolution mechanism afforded by coverage under the RTA, through access to the Victorian Civil and Administrative Tribunal (VCAT), Residential Tenancies (RT) List. However, the RTA does not provide the same degree of security of tenure for residents as the RVA, as a resident on a periodic residency agreement can be issued a 90 day no reason notice to vacate at any time. This can have the perverse effect of restricting residents from exercising the rights conferred on them by the RTA, although a significant number of households currently reside in caravan parks as their only or main place of residence, and use the RTA to address concerns related to their accommodation.

While the following comments encourage coverage for retirees living in caravan parks under the RTA as the best option within the existing legislative options, this would only be ideal where further amendments to the RTA could be achieved related to security of tenure. However, a major review of the RTA has recently been conducted by the State Government in which security of tenure issues have been discussed and debated. An extensive consultation process was undertaken as part of this process, including the establishment of a working group, of which the TUV was a member. While the Tenants Union welcomes the reforms contained within the

Residential Tenancies (Amendment) Bill 2002, currently before the Victorian Parliament, we do believe that there is always room for improvement. The imperative to ensure the best possible legislative protection for residents of retiree caravan parks compels us to raise these issues, but is not intended to undermine the significant work undertaken by the RTA working group, or the Government, on this issue.

In the long term, further work in the area of legislative protection for retirement village residents is warranted, possibly with the view to developing a separate piece of legislation that is specific to this type of accommodation. The Tenants Union would welcome the opportunity to participate in such a project, and to provide advice where warranted and appropriate.

How can residents in residential parks – which may or may not be retirement villages or caravan parks under current legislation – be given greater security of tenure?

The TUV is concerned by the apparent trend of some caravan park operators to specifically target retirees for permanent, long-term accommodation in caravan parks. While this may appear to offer a low cost housing option, residents who purchase a dwelling in the park are often outlaying significant amounts of money. Dwellings can cost up to $100,000, with residents also required to pay a weekly or fortnightly fee to rent the site on which the dwelling is located. Those renting both the dwelling and the site are also often paying considerable charges in rent for the dwelling and the site, although they are not making substantial lump sum capital investments.

The following case study is taken from a Tenants Union Legal Service case file, and illustrates some of the issues that are identified in this paper.

CASE STUDY

> *A residential caravan park in the Northern suburbs of Melbourne specifically targets retirees only. We estimate that there are currently approximately 180 residents living permanently in the park. Many residents have contacted our service and recently a "core group" worked with the Tenants Union to address longstanding concerns about the management of the Park.*
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> *The residents are all elderly and the park has a "village" feel. It is an integrated community of activities, services and style of life. Nevertheless the park is probably not covered under the current definition of a retirement village because to our knowledge no resident has paid an in-going contribution, although this is yet to be tested, as we are relying on information provided by a small group of residents. Residents buy a prefabricated dwelling for which they currently pay about $90,000. Residents then pay rent of about $90 per week to rent a site. They have no legal title as such, but a license that can be terminated by either party in given, specified circumstances.*
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> *It is possible that the Residential Tenancies Act 1997 (RTA) might cover these residents, although there is doubt that there is at least one moveable dwelling within the Park, to bring the Park within the definition of a caravan park under the RTA.*

The residents are primarily concerned about the lack of provision of services as promised in pre-contract promotional material and in the licences and contracts themselves. For example, "24 hour management" was promised when in reality the central office is not open for more than three hours per day. Regular gardening was promised but is not provided. Numerous other issues of a similar nature were raised.

Legislative Coverage and Dispute Resolution Mechanisms

In order to be considered a retirement village under the RVA, at least one resident of the premises must have paid an ingoing contribution. In our experience, caravan parks that are targeted to retirees rarely require residents to pay an ingoing contribution. Where a resident has purchased the dwelling and rents the site on which it is located, the outlay for the dwelling is not considered to be an ingoing fee. This precludes many of these parks and residents from coverage under the RVA.

The Tenants Union believes that coverage under the RVA for caravan parks that specifically target retirees is not appropriate. In our experience, retiree parks differ little from other caravan parks that offer long term accommodation, apart from the relative age of the residents. Bringing retiree parks under the RVA would create an artificial distinction between these parks and other long-term parks, and result in a disparity of the treatment of residents. Further, the RVA can offer little to residents of caravan parks in relation to important issues related to quality of life such as cleaning and maintenance of common areas, privacy, rent increases and repairs.

It may be possible to amend the RVA by including provisions from the RTA related to cleaning and maintenance, privacy, rent increases and repairs. However, the lack of an independent dispute resolution mechanism such as VCAT to hear disputes related to these issues would render those provisions ineffective, as there would be no way to enforce them. Establishing a dispute resolution process such as VCAT to hear and determine matters would be costly and inefficient, when such a mechanism already exists.

The alternative is coverage under the RTA, which does offer clearly delineated rights and responsibilities around basic living issues such as cleaning and maintenance, privacy, rent increases and repairs. However, in order to be considered a caravan park under the RTA at least one dwelling in the park must be considered to be a movable dwelling. Under the RTA a movable dwelling is defined as "a dwelling that is designed to be movable, but does not include a dwelling that cannot be situated at and removed from a place within 24 hours" (section 3, RTA, 1997). As the discussion paper identifies, there are significant problems with this definition, as any dwelling could theoretically be moved within 24 hours, where time, resources and labour were available. However, access to the resources needed to move a dwelling within 24 hours is unlikely for most park residents. Amending the definition of a movable dwelling to "a dwelling that is designed to be movable" would better reflect the nature of retiree parks, where residents often go to great lengths to establish their homes, through the development of gardens, fixed annexes and internal plumbing.

The Tenants Union believes that retired persons living in caravan parks would be best served by coverage under the RTA, where there is strong protection for the residents

in the areas of rent increases, the provision of services, repairs and quiet enjoyment (the Residential Tenancies (Amendment) Bill 2002 proposes improvements in the areas of rent increases, repairs and quiet enjoyment which will provide even better outcomes for residents). Whereas the RVA relies on terms and conditions in the contract to deal with these issues, the RTA clearly sets out the rights and responsibilities of both parties providing a clear framework for all residents and operators, which also minimises the problems of inconsistency across various accommodation providers.

As mentioned above, the RVA lacks a dispute resolution mechanism that deals with problems and issues. The RTA, however, provides access to an independent, affordable, self-help dispute resolution mechanism via the VCAT RT List. The jurisdiction is designed to be a self-help jurisdiction, with minimal costs involved. Members of the RT List already hear caravan park matters, and so are experienced with the issues affecting residents.

Despite the reservations that have been expressed, the Tenants Union believes that in the short term, the simplest and most effective legislative protection for retirees living in caravan parks is coverage under the RTA.

Recommendation: that caravan parks be explicitly excluded from coverage under the Retirement Villages Act 1986 and that the definition of "movable dwelling" contained in section 3 of the Residential Tenancies Act 1997 be amended to "a dwelling that is designed to be movable".

Information provision and advocacy

In providing coverage to retirees living in caravan parks under the RTA, significant advantages would be gained in relation to information provision to residents on rights and responsibilities. The Tenants Union believes that information provision is imperative in ensuring the rights of vulnerable consumers are protected. Consistency across all retiree parks around rights and responsibilities would allow for a detailed handbook to be developed specifically for residents of these types of parks. This information could be made widely available through mail outs to registered parks, and via the Consumer Affairs funded tenancy advice services across the State. The Tenants Union has significant experience in producing a range of publications targeted at renters of particular tenure types and would welcome the opportunity to assist in the development of such a handbook.

Recommendation: that a handbook targeted to retirees living in caravan parks be developed and widely distributed. That the Tenants Union assist in the development and distribution of an appropriate and accessible publication.

Security of Tenure

The following section relates specifically to improvements that could be made to the RTA to provide better security of tenure for residents of caravan parks targeted at retirees. In proposing these further amendments we again acknowledge that the Residential Tenancies (Amendment) Bill 2002 is currently before parliament, and that significant amendments such as these are unlikely to occur in the near future. We further reiterate that this is not to undermine the significant achievements of the RTA

working group, but simply to be up front about the reality of the caravan park environment, whether residents are retirees or not.

Currently residents of caravan parks must reside in the park for 90 consecutive days before being considered a resident for the purposes of the Act. The Tenants Union believes that the 90-day rule is unnecessary and serves no purpose other than to provide unscrupulous operators with a legal loophole that allows them to exploit and unreasonably evict residents. Caravan park residents should enjoy equal protection under the Act as all other tenants.

A further problem exists with security of tenure, as a park owner or manager can serve a 90-day no reason notice to vacate on a resident where they have a periodic tenancy agreement, regardless of whether they own or rent the dwelling. Whilst the Tenants Union can appreciate that park owners may have legitimate reasons for wanting to evict a tenant, we believe that they should be obliged to use the numerous other eviction provisions in the Act. All of these provisions require the operator to explain, and if necessary to show just cause before the Tribunal, why they want to evict the tenant. We cannot see how any park operator, with a legitimate reason for needing to evict a resident, would be hamstrung by these remaining eviction provisions. The ability to serve a no reason notice to vacate can also inhibit residents from exercising their rights under the Act, despite the fact that a resident can challenge the validity of such a notice where they believe it to be retaliatory. However where a resident has a fixed term lease agreement, a park operator cannot issue a no reason notice.

Limitations could be placed on the park operator's ability to serve no reason notices to vacate on residents who own their dwelling but rent the site. Special leave should be sought by the park operator to serve a notice to vacate that does not relate to the failure of a resident to comply with a responsibility under the RTA. The park operator, in seeking leave to serve the notice should be required to show special cause as to why the notice should be served. In making a decision VCAT should be required to find that extraordinary circumstances be found to pertain. (Residents in parks could previously claim severe hardship to defeat a notice in such circumstances (sections 24-25 RTA), but as a result of the Supreme Court's decision in *Director Of Housing V Murphy*, these provisions are extremely doubtful. In that case the court found they couldn't override a notice to vacate legitimately served).