



30 June 2016

By email: 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**) is pleased to contribute to the Parliamentary Inquiry into Retirement Housing, which we believe speaks to a real and urgent need for more effective regulation, accessible dispute resolution and independent oversight in the retirement housing sector.

Context

Consumer protection in the housing sector is currently failing Victorian retirees. Retirement housing arrangements and contracts are complex and frequently place consumers at a disadvantage in the bargaining process. The commonly used Deferred Management Fee (**DMF**) business model is open to exploitation by operators, and often delivers 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. Operators often play to this misconception through the sales and marketing process, who when challenged on the terms of the contract after the fact claim this is a lifestyle choice, not an investment decision.

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

Once a retiree has chosen their living arrangement, ongoing costs are frequently unclear and open to unilateral determination by operators—with no need to justify the amounts they charge. This is partly due to the complex legislative and regulatory framework that applies to the sector, and often

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overlaps various forms of retirement housing. This in turn leads to long and complex contracts, which are difficult for consumers to understand and can result in extremely poor consumer outcomes.

Retirement village and residential park managers require very little training or qualifications beyond basic first aid, and sometimes operate with a minimum of oversight. Relationships between managers and residents frequently break down, leaving residents with little or no voice in the management of their living arrangements. Reports of disenfranchisement, isolation, and elder abuse are common.

If a retiree has a dispute with their manager or operator, seeking resolution of that dispute can be a lengthy, expensive and intimidating process. The Victorian Civil and Administrative Tribunal (**VCAT**) remains the primary forum for external dispute resolution of retirement housing disputes. VCAT determines matters through an adversarial, court-like process during which retirees are required to represent themselves, or seek leave for legal representation. While the complexity of retirement housing matters means that this will often be granted, the cost of such representation is often out of reach for retirees.

While VCAT is, in theory, appropriate for many forms of civil dispute, it is manifestly unsuited to hear disputes around retirement housing. The process itself is so difficult that many retirees simply do not engage with it, and their complaints go unheard and unresolved. A lack of listings at VCAT is not a robust indicator of the level of disputation in the sector. The reality is that a large number of older Victorians feel disempowered, disengaged and intimidated by the VCAT process. While Consumer Affairs Victoria (**CAV**) does have the power to conduct mediation or conciliation in retirement housing matters, it has no power to compel traders to participate in the process.¹ This leaves retirees with nowhere to go.

On that basis, we strongly advocate for the establishment of an independent, industry funded Retirement Housing Ombudsman (**RHO**) to hear and determine retirement housing disputes. The Financial Ombudsman Service (**FOS**), Telecommunications Industry Ombudsman (**TIO**) and the Energy and Water Ombudsman Victoria (**EWOV**) provide useful models on which to base a potential RHO. Such a service would provide free, accessible, informed and authoritative determination of retirement housing disputes—and would give Victoria's retirees the access to justice that they are currently sorely lacking.

It is well documented that Australia's population is ageing, and that the retirement housing sector will grow substantially over the coming years. To illustrate this point, we reproduce part of the Executive Summary to the Property Council of Australia (PCA) report *National Overview of the Retirement Village Sector*, published in October 2014. While the document is specifically concerned with retirement villages, the comments regarding demographics and the need for investment in new housing apply across the entire retirement housing sector—

The dramatic increase in the number of Australians turning 65 over the next 20 years is now an established demographic fact. Treasury projects a doubling of the seniors' population by 2050, with an economically significant reduction in the ratio of taxpayers to retirees.

¹ <https://www.consumer.vic.gov.au/about-us/who-we-are-and-what-we-do/our-role-scope-and-policies/conciliation-policy>

To support this growth there needs to be a large corresponding increase in the amount of purpose-built housing, so that the 8.1 million Australians who will be over 65 by 2050 continue to have the choice, independence and autonomy that they expect and deserve.

Currently about 184,000 Australians live in retirement villages, or 5.7 per cent of the over 65 population. This penetration rate is projected to increase to 7.5 per cent in 2025.

The increased rate, combined with the increase in the seniors' population, means that there will be approximately 382,000 people wanting to live in a retirement village in 2025.

*This is more than double the 184,000 residents currently calling a retirement village home. As such, a large amount of investment will be needed in the sector in coming years.*²

The cases that Consumer Action sees through its casework represent only a very small portion of the alleged problems in Victoria's retirement housing sector—these will grow exponentially if not addressed through prudent regulation and structural reform. Retirees represent a specific and often vulnerable consumer base, and require a targeted policy response to ensure they are adequately protected.

The need for dedicated regulation and oversight of the retirement housing sector has been acknowledged in other jurisdictions, and these provide useful models for Victoria. South Australia and New Zealand have particularly well developed administrative approaches to the regulation and oversight of retirement villages.

In New Zealand, retirement village legislation is administered by the Commission for Financial Capability, which is overseen by the Retirement Commissioner (appointed by the Minister of Commerce). The Commission monitors and reports on the sector, and also provides complaints handling and dispute resolution services through the appointment of dispute panels (panel members are appointed by the Commissioner).

Under the New Zealand *Retirement Villages Act 2003*, retirement villages are required to appoint a "statutory supervisor", who must be licensed by the Financial Markets Authority, under the *Financial Markets Supervisors Act 2011*. Statutory supervisors provide independent oversight, auditing and reporting on retirement village finances—and have the power to require operators to provide information relating to the village's financial position.

Statutory supervisors are required to exercise reasonable care and skill to ascertain that the financial position of the village, the security interests of the residents, and the management of the village are adequate.

In South Australia, retirement village legislation is administered by the Office of the Ageing. The South Australian government provides a range of resources for potential residents of retirement villages through their online portal "sa.gov.au", in an area of the site dedicated to seniors. This information is extensive and clearly explains the nature of retirement village arrangements, and the potential pitfalls—in addition to certain rights (such as a right to cool off) which South Australian retirees have under their Retirement Villages Act.

² Property Council of Australia, *National Overview of the Retirement Village Sector*, October 2014. P i.

The SA Office of the Ageing also runs a dispute mediation service, and disputes are usually required to attempt mediation before proceeding to the Residential Tenancies Tribunal, a listing within the South Australian Civil and Administrative Tribunal (**SACAT**). Like New Zealand, South Australia has a statutory Code of Conduct for the retirement village sector, as does Western Australia.

While many of the above measures are targeted at retirement villages, there is no reason why similar principles could not be applied to the regulation and oversight of other forms of retirement housing—including residential parks and independent living units (**ILUs**).

Recommendations

Consumer Action has formed clear views regarding the current consumer protection shortfalls in Victoria's retirement housing sector, and how the system may be reformed.

We recommend:

- A review of DMFs and a tightening of regulation as to how they are applied. DMFs should only ever be presented as a genuine choice for consumers, and must be shown to provide real value. As they currently operate, they can too easily be applied unfairly. If wrongly exploited by operators the impact of the DMF business model can be catastrophic for retirees.
- The establishment of a Retirement Housing Ombudsman (RHO) to hear and determine retirement housing disputes. This forum should be industry funded, free and easily accessible to retirees.
- A review of the *Retirement Villages Act 1986* and the development of clear guidelines to ensure greater clarity in contracting, and to enhance consumer understanding of the sector.
- The implementation of required training and qualifications for retirement housing managers and operators, which must be maintained on an ongoing basis.
- A statutory Code of Conduct, (or Codes), to cover all forms of retirement housing—expressed in plain English, to set and maintain industry standards. This should include a requirement for an effective internal dispute resolution mechanism.
- The establishment of “statutory supervisors” similar to those in New Zealand, to ensure that there is professional, independent oversight and ongoing auditing of retirement village and residential park finances.
- Consideration given to the establishment of a dedicated agency or commission to oversee and co-ordinate regulation of the retirement sector (including retirement housing), with an ongoing role in monitoring the sector. This could be done by expanding the current role of the Commissioner for Senior Victorians, or by establishing a new body.

Our views are outlined in more detail below.

About Consumer Action

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

1. Deferred Management Fees

Deferred Management Fees (**DMFs**), or Exit Fees, are a commonly used business model in the retirement housing sector.

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 on the sale of the unit, through the departing retirees 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.³

1.1 The problem

This premium cost of retirement village and residential park living is generally justified by operators as a lifestyle choice, rather than an investment decision. Residents gain access to services, facilities and community through their choice to reside in a retirement village or similar community, 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 has become well entrenched in the industry.

It is arguable that a cultural value underlies the model—retirees are considered to no longer be at the 'asset accumulation' stage of their lives. Therefore, it is not considered predatory to structure deals in such a way that they will strip them of their net worth over time. The online resource, "*Find my retirement home.com.au*" sets out a page dedicated to explaining DMFs, through which the organisations founder and CEO Richard Andrews states:

*"...there is no denying that Deferred Fee schemes weigh heavily in favour of the village owner. Village owners and developers have invested many thousands of dollars with accountants and lawyers to design contracts that work within the appropriate state and federal laws, yet maximise the profit and tax outcomes for owner."*⁴

The DMF model has the effect of depriving retirees of the benefits of capital growth, reframing their expenditure on housing from an investment, to a payment for service and lifestyle.

³ <http://www.blog-findmyretirementhome.com.au/understanding-exit-fees/>

⁴ <http://www.blog-findmyretirementhome.com.au/understanding-exit-fees/>

The generally one-sided nature of DMF arrangements, and the questionable value that they deliver, gives rise to the contention that DMFs may constitute an inherently unfair contract term—and this is a matter to which Consumer Action has given some consideration. Our current view is that DMFs, in theory, are not *necessarily* unfair. If the consumer has a genuine option to make an upfront purchase instead of entering into a DMF arrangement, or to opt for an ongoing rental arrangement instead—and if there are management services of genuine value provided in return for the DMF, then the model can work. That being said, in our view the practical operation of DMFs is *often* likely to be unfair, because the consumer has no genuine choice—and no real value is delivered in return for the fee paid. The vast majority of contract terms that impose DMFs that we have reviewed may be reasonably challenged as an unfair contract terms under the Australian Consumer Law.

Ultimately, whether a DMF constitutes a fair arrangement or not depends on the value that can be placed on living in the particular village, and the services and facilities that are made available to the resident. This value will be partly subjective, (some consumers will regard these factors as more important than others), and partly objective—depending on the proportion of profit the operators chooses to spend re-investing in the village, and in ensuring that promised services and facilities are delivered.

At the very least, it can be said that the DMF model is very open to exploitation, and is too often utilised as an arbitrary figure by operators to maximise profit without any real connection to the value offered to the consumer in return—essentially making it an exercise in price gouging. Too often, consumers are seen as ‘fair game’, because they are no longer in the ‘asset accumulation phase’ of their lives. This can lead to exploitation of a vulnerable consumer class, who are often experiencing a difficult time as they transition from full independence to a more controlled environment. That this form of exploitation has become the norm, or accepted business practice, does not mean that it is fair.

As Consumer Action’s CEO Gerard Brody stated in a Consumer Action press release dated 15 February 2016:

‘People often enter these retirement complexes at times of great personal upheaval. They may be moving out of the family home, have lost their partner, or be suffering physically, so they’re not in a position to be reading and understanding pages and pages of complex contracts.’

The potential for operators to exploit a retiree’s vulnerability to secure an unfair commercial arrangement through the DMF model should not be underestimated.

Putting the fundamental issue of fairness aside, DMFs are problematic in a number of other ways.

First, DMF arrangements deprive the consumer of the ability to compare various options based on cost, because the true cost of the DMF can only be known at the conclusion of the property’s sale. This is because DMFs typically operate as a proportion of the sale price of the unit. While projections can be made, these are variable and speculative. This leaves the consumer in a position where they cannot really know the cost of leaving their village until the time comes to do so. From a behavioural economics perspective, the relatively abstract and ‘distant’ nature of DMFs may also mean that they are not taken into account in the consumer’s decision making process as

much as they should be. The lack of certainty around cost also undermines competition, making it very difficult for consumers to objectively weigh up similar options.

Another problem is the degree of variance across the industry. DMFs can vary from 10% to upwards of 40% of the unit sale price, seemingly with little justification. As they stand, DMFs appear to provide operators with an arbitrary means by which to increase profitability—without any requirement to show the value the consumer is receiving in return. DMFs can also be unevenly applied over the course of the contract, and weighted to the operator's advantage. Again, quoting from *Find my retirement home.com.au*:

Some village operators, particularly those with a short average length of stay, front-load the fee into the first few years of a resident's occupancy instead of averaging the fee equally over the accrual period. Under a 25 over 10 structure, a village operator might make the first year 8%, the second 5%, and every year thereafter 1.5%. This ensures that a resident in occupation for only three or so years ends up paying the majority of the deferred management fee.⁵

DMFs can have the effect of trapping the consumer in a village that they may not wish to remain in, because the sum they will receive on sale of the unit will be too low to allow them to buy into an equivalent alternative, due to the increase in property prices over the time they have occupied that unit.

In situations where retirees may wish to move to be closer to their extended family, (who may have moved to another city), this can be extremely distressing, and leave retirees isolated and separated from family at a vulnerable time of their lives.

In January 2016, the Commissioner for Senior Victorians published a report titled *Ageing is everyone's business—a report on isolation and loneliness among senior Victorians* found:

There is strong evidence in the literature that older people who are socially engaged are happier and healthier than those who are socially isolated, and that the socially engaged have better levels of health and wellbeing that, in turn, enable continued social activity. Consequently, policies and strategies that promote healthy and active ageing and age-friendly communities are key to addressing isolation and loneliness.⁶

Finally, DMFs are problematic because their structure plays to the common misconception that retirees are *purchasing* a unit when they enter a retirement complex—rather than simply the right to occupy the unit for a period of time. Australia has traditionally had very high levels of home ownership—and the concept of long term leasing for older residents is not part of our cultural understanding. Rather, property is considered an investment class upon which most ordinary Australians have built their wealth. Retirees who enter into villages on a DMF basis generally do so having just sold their home, after a long period of home ownership.

⁵ <http://www.blog-findmyretirementhome.com.au/understanding-exit-fees/>

⁶ Commissioner for Senior Victorians, *Ageing is everyone's business—a report on isolation and loneliness among senior Victorians*, January 2016, p. 21.

Taking these factors together (and taking into account the high sums involved in 'buying into' a village) it is not surprising that many retirees operate on the misconception that their purchase is an investment—simply the latest in what may have been a series of property investments over time, for most of their adult lives. The marketing and sales process often does little to dispel this misconception, failing to make clear that the retiree is usually transitioning to a new form of occupancy (essentially returning to being a tenant with a right to occupy, without any freehold title)⁷ and this misunderstanding can lead to shock and despair at the conclusion of the contract.

As Consumer Action's CEO stated in the same press release quoted above,

'We need to ensure people understand what they're signing up for and from the stories we've heard, many don't.'

1.2 DMFs in practice

Consumer Action has recently concluded a major case related to DMFs at a retirement park, and we describe the matter in detail below.

CASE STUDY

Willow Lodge Village

At the time of writing, Consumer Action represents 14 clients who live at the Willow Lodge Village in Bangholme, Victoria (**Willow Lodge**).

Willow Lodge is a retirement park regulated by the *Residential Tenancies Act 1997* (Vic). Willow Lodge has approximately 400 demountable homes and 600 residents.

Willow Lodge is owned and operated by Walter Elliott Holdings Pty Ltd (**Walter Elliott**). Walter Elliott is a prominent, mainstream provider of retirement housing and promotes itself as owning and operating 27 retirement housing properties throughout Australia, 3 of which are located in Victoria.⁸ According to a 2014 market research report, Walter Elliott is the largest manufactured home estate operator in Queensland and a "leading developer of Over 50's lifestyle manufacturing parks."⁹

The litigation

All 14 clients entered into site leases with Walter Elliott which contained a deferred management fee (**DMF**) term. The term calculated the DMF as 4% of the "park home sale price" for each year during which the client resided at Willow Lodge to a maximum of five (5) years (i.e. 20%).

⁷ A small minority of retirement villages do offer freehold title, but even then, DMF's still accrue for those properties. For more, see: <http://www.retirementliving.org.au/wp-content/uploads/2015/03/National-overview-of-the-retirement-village-sector-Grant-Thornton.pdf>

⁸ <http://www.palmlakeresort.com.au/property-guide/>

⁹ Colliers International, *Manufactured Home Estates: Australian market overview*, November 2014, <http://www.caravanwa.com.au/wp-content/uploads/2015/12/Colliers-International-Australian-MHE-White-Paper-FINAL-VERSION.pdf>

In December 2014, our 14 clients commenced a group proceeding in the Victorian Civil and Administrative Tribunal (**VCAT**) in which they all claimed that the DMF was an unfair contract term,¹⁰ operated as a penalty and was harsh and unconscionable.¹¹ Some of the clients also claimed that the fees were invalid due to non-compliance with the *Residential Tenancies Act 1997* (Vic)¹² and that Walter Elliott had engaged in unconscionable conduct.¹³

The proceeding was listed for a 5 week trial commencing on 18 July 2016.

In June 2016, the parties agreed to settle the proceeding on non-confidential terms. Settlement occurred 18 months after the initial VCAT application was lodged, and years after residents first raised concerns with their park owners.

The settlement

Six of the fourteen clients settled on the basis that their DMF will be completely waived, and all references to the DMF removed from their site leases.

Two of the clients settled on the basis that they will enter into a deed of variation, whereby their DMF was reduced from 20% over a five year period, to a flat 4% of the Park Home Sale Price.

The other six clients settled on the basis that they would enter into a deed of variation to calculate the DMF as 1.2% of the Park Home Sale Price for each year of occupation, up to a maximum of 10 years (i.e. a total of 12%). Those clients also received a \$3000 payment per household in consideration for personal stress and inconvenience suffered by them throughout the proceedings.

In addition, all of the clients settled on the basis that a rent review clause would be written into their lease agreement. The clause will require an independent valuer to determine the new rent on each market rent review date, by reference to market value of the home (but not taking into account an increase in market value as a result of capital expenditure by Walter Elliot during the previous term of the lease).

The rent review clause also requires Walter Elliott to commit DMF revenue to capital improvements to the park, and for that expenditure to be made following prior consultation with the park residents' committee. If requested, Walter Elliott must provide an itemised list of expenditure within 3 months from the end of the financial year to demonstrate that this requirement has been complied with.

Elderly and vulnerable consumers as litigants

Our 14 clients all have low levels of education and are either pensioners or low-income earners. The oldest client is 84 years old, and the youngest client is 50 years old but suffers from an acquired brain injury. Prior to this case, all had limited (if any) exposure to the legal system and none had engaged a lawyer in relation to a consumer law or commercial dispute.

¹⁰ *Fair Trading Act 1999* (Vic) s 32W; *Australian Consumer Law* s 24

¹¹ *Residential Tenancies Act 1997* (Vic) ss 144A(3) and 206G(2)(a)

¹² *Residential Tenancies Act 1997* (Vic) s 206S

¹³ *Fair Trading Act 1999* (Vic) s 8; *Australian Consumer Law* s 21

Elderly consumers are not well-equipped to deal with lengthy and adversarial litigation for two key reasons. Firstly, many are in declining health. In this case, after commencing the proceeding against Walter Elliott:

- One of our clients was admitted to hospital 8-10 times to treat a vascular condition with their hospital stay ranging from 2 days to 2 weeks per admission;
- One of our clients was treated for breast cancer and is waiting to move into a nursing home;
- One of our clients underwent bowel cancer treatment, including chemotherapy and radiation, and now uses a stomach bag;
- One of our clients suffered a heart attack and will require surgery for a heart bypass;
- One of our clients has a neurological condition and suffered from random and uncontrollable seizures throughout the litigation;
- One of our clients was hospitalised for two weeks due to a kidney infection;
- Five of our clients were the spouses and carers for the above clients.

A consumer's declining health will affect their ability to litigate their claim. If the proceeding is delayed, the consumer may be too unwell to continue their claim until completion. That is a unique prejudice which affects elderly consumers. In this case, the trial would have concluded 20 months after the proceeding was commenced. For elderly consumers, justice delayed is justice denied.

A second issue is that litigation is stressful. Had this matter proceeded to trial, our clients would have been cross-examined for several hours, potentially up to one day per client. That is particularly intimidating for elderly clients who suffer from medical conditions. An ombudsman scheme which allows consumers to make written submissions and appear by teleconference is a more appropriate forum for elderly consumers.

Access to Justice

Without legal representation, many elderly consumers are unable to challenge the fees charged by retirement operators in a Court or Tribunal. The evidentiary onus on a consumer to prove their claim is significantly higher at a Court or Tribunal than at an ombudsman scheme.

In this proceeding, the parties and/or their legal representatives were required to attend direction hearings, 2 full day mediations/compulsory conferences, and respond to and appear at 3 interlocutory applications on a variety of issues. Our clients filed 30 witness statements spanning approximately 800 pages (including attachments). Both parties were ordered to make discovery and discovered 319 categories of documents. An elderly consumer could not have litigated this claim without legal representation.

Costs

Retirement housing disputes are complex and hard fought. As such, prosecuting these claims are expensive and out of reach for many elderly consumers. This proceeding was set down for a 5 week trial. Appearing at the trial alone would have cost approximately \$200,000 to \$300,000 for legal fees and disbursements including fees for two barristers, a team of 3-5 lawyers to assist with the trial, an expert witness to give evidence, and the fees for court transcripts.

Taking into account the 18 months of litigation prior to trial, an elderly pensioner could not afford to pay for a lawyer to pursue their legal rights in VCAT or a Court. This has significant consequences for elderly consumers being able to access justice.

1.3 The solution

Consumer Action has formed the view that DMFs should be regulated to ensure they operate fairly, and are less open to exploitation by retirement housing operators at the expense of elderly consumers. There are a number of practical features to the regulation that will, taken together, provide the necessary fairness and accessibility that is currently lacking.

First, in the vast majority of cases, the DMF should be based on a percentage of the purchase price when the resident first enters the village, rather than the sale price when they leave. While this does occur in some cases, it is by no means the norm—a majority of DMF arrangements are currently based on the sale price.

Regulating DMFs in this way would ensure that the dollar value of the DMF can be calculated when the arrangement is entered into—and the consumer can then compare relative costs across villages before they choose where to live. This would also work against the behavioural factors cited above, setting the DMF as a hard figure in the consumer's mind—which means they are more likely to effectively factor it into their housing decision.

In a minority of cases, (such as in ageing demountable residential parks), the value of the property may decline over the period of occupancy. In cases where that occurs, the DMF should be based on the sale price—so as not to unfairly disadvantage the residents. Operators and owners who wish to avoid this situation will therefore have an incentive to maintain and upgrade properties.

As they're now used, DMFs enable operators to make above market rates from the sale of property rights. Regulating DMFs in this way would still afford operators a significant profit margin, but would also enable residents to gain more capital gain from the appreciation of the value of their unit over the course of their occupancy. Given the DMF is nominally charged in order to provide management services, there seems little justification for it to be a speculative amount linked to property market growth. Put another way, if the services the DMF pays for can be quantified, then the DMF should also be quantifiable at the outset of the contract.

Further, the percentage that can be charged as a DMF should be capped, and the DMF should have to be applied equally over a ten year period (rather than 'front-loaded', as described in the

example above). An appropriate level for the DMF cap should be determined following a thorough, independent market study and consultation period.

Finally, the resident should always have the opportunity pay the DMF upfront if they wish to do so (effectively choosing not to defer the fee, to ensure they capture a maximum of the sale price when they leave), or to enter into the arrangement on the basis of a long term tenancy—essentially as a renter, rather than on the basis of a DMF arrangement. This may have the effect that a DMF would be reasonably considered part of the ‘upfront price’ of the contract, so that it couldn’t be challenged for unfairness under the ACL.¹⁴ At the moment, the amount of DMFs are uncertain and unclear, contributing to the likelihood that they can be considered unfair contract terms.

This would ensure that consumers are in a position to make a clear choice around taking on a DMF, which should in turn lead to a greater understanding of how DMFs operate—and less distress, discontent and confusion when the DMF is ultimately applied. Again, this would require the quantum of the DMF to be clearly determined at the outset of the contract. One major benefit of regulating DMFs in this manner would be to improve consumer understanding of DMFs, and remove incorrect expectations that a consumer is making an investment when they enter a retirement park or village. Currently, far too few retirees truly understand that by entering into a retirement living arrangement they are transitioning back to being a tenant, rather than a property owner. The misunderstanding alone leads to a great deal of discontent with the DMF business model.

Summary and Recommendations:

- The DMF model has evolved over time from being a legitimate means to enable retirees to buy into retirement living at below market rates, to a price gouging mechanism that is heavily weighted in favour of operators and open to exploitation.
- The DMF model contributes to wide-spread consumer confusion and misunderstanding around the nature of the property rights being acquired when retirees enter a village or park.
- DMFs should be regulated to provide greater clarity for consumers, and re-set the power imbalance so that elderly consumers are not exploited. This regulation could include:
 - Requiring the DMF to be calculated on the basis of the purchase price, rather than the sale price of the property. This would enable consumers to make a genuinely informed choice at the commencement of the contract. The only exception to this rule would be in the minority of cases where the value of the property is expected to decline over the course of the occupancy, in which case the DMF should be calculated on the basis of the sale price.

¹⁴ Section 26(2), Australian Consumer Law.

- Cap the allowable DMF at a set percentage value of the purchase price (or the sale price, for the minority of those cases described in the point above), and require that value be applied evenly over a ten year period, rather than being “front-loaded” in the first few years of the lease. An appropriate cap should be established following an independent market study, and thorough consultation.
- Require the DMF arrangement to be offered as a choice of three options. The DMF may be paid as an exit fee, or upfront—allowing the consumer to maximise their capital gain on sale of the property. Alternatively, the consumer may choose to offset the DMF as a long term rental arrangement. A benefit of presenting DMFs in this manner would be to break down the current levels of confusion and misunderstanding that surround DMFs, which causes a great deal of consumer dissatisfaction.
- Sales and marketing materials should also be required to be clearer on the nature of DMFs, and actively advise the consumer that buying into a retirement living arrangement is not an investment in property, but a payment for services.

2. A Retirement Housing Ombudsman

The time, money and energy currently required for retirees to obtain justice in retirement housing disputes is excessive, and directly militates against retirees making formal legal complaints. This leaves a vulnerable consumer class grossly under-served by the justice system and open to exploitation by commercial operators.

The procedural requirements for applicants are complicated and burdensome, particularly VCAT requirements to produce expert reports and witnesses. Residents can also find it difficult to enforce VCAT decisions if they eventually obtain a favourable outcome. Residents are often facing well-resourced opposition with legal representation, and VCAT processes do not sufficiently take into account this imbalance of power.

In addition to these factors, a lack of available community legal assistance services in this sector creates a significant barrier to justice. Community legal centres simply do not have the resources to provide casework assistance to residents. Paid legal advice and support for residents can be difficult to obtain due to a lack of affordable expertise, and many commercial firms are unable to provide advice in any event, due to conflicts of interest.

The vulnerability of retirees as a collective consumer class should not be underestimated, and often goes unnoticed and unappreciated by policy makers.

Consumer Action has long held this view, and raised the issue in a joint submission made with the Council of the Ageing (**COTA**), the Residents of Retirement Villages Victoria (**RRVV**) to Consumer Affairs Victoria (CAV) in March 2015.

Part of that submission is reproduced below:

“Retirement housing problems are often 'hidden' as older people may be unwilling or unable to make complaints or enforce their legal rights. Many older people may have difficulty accessing complaint mechanisms and communicating their needs due to physical limitations, communication difficulties, or a lack of knowledge of their rights, entitlements, and the complaint mechanisms available.¹⁵ Another barrier is the difficulty in accessing specialist advice, which is often both expensive and hard to find. In general, retirement housing residents are not wealthy, and may find it impossible to pay for specialist advice. The majority of residents are either fully or partially reliant on the age pension.¹⁶

There are also social barriers which leave some residents feeling too intimidated to complain. Residents may fear being labelled a trouble-maker by other residents, or damaging their relationship with staff and management.¹⁷ As set out above, the importance of housing is amplified as we age, and older residents may fear losing their homes if they complain. We have received reports of outright bullying by retirement village managers in response to complaints, or to deter residents from making complaints.

Statistics relating to abuse in aged care is indicative of the barriers older residents face to seeking assistance. It is estimated that close to 70% of older people do not access legal services in instances of abuse because the situation is personal and individual and the older person may fear retribution from the abuser if they attempt to stop them.¹⁸

The Human Rights Commission has identified a number of general barriers impacting on older people's access to legal services, which included:

- *technological barriers, particularly for telephone and web based services;*
- *a lack of awareness of where to obtain legal information and assistance;*
- *a lack of appropriately communicated legal information;*
- *the high cost of legal services;*
- *a lack of interest by some legal practitioners in older clients;*
- *difficulties in accessing legal aid, including restrictive eligibility tests;*
- *a lack of availability of legal aid for civil disputes;*
- *lack of specialised legal services for older people, particularly in rural, regional and remote areas; and*
- *lack of resources in community legal centres to tailor their services to the needs of older people.¹⁹*

¹⁵ Dr. B. Black, 'Empowering and rights-based approaches to working with older people', *Alliance for the Prevention of Elder Abuse: Western Australia*, 2004, available at: <http://apeawa.advocare.org.au/publications/empowering/rights-based-a/>

¹⁶ L. Towart, 'Who Lives in Retirement Villages; are they wealthy enclaves, ghettos or connected communities?', University of Technology, 2013, available at: <http://www.soacconference.com.au/wp-content/uploads/2013/12/Towart-Social.pdf>.

¹⁷ Above n. 4.

¹⁸ D. Cripps et. al., 'Abuse of older people: Issues for lawyers', *Elder Law Review* Volume 1 No. 1, 2002, pp14-19, as quoted in Australian Human Rights Commission, 'Submission to the House of Representatives Standing Committee on Legal Affairs regarding Inquiry into Older People and the Law', 2006, available at: <https://www.humanrights.gov.au/inquiry-older-people-and-law#toc6>.

¹⁹ S. Ellison et. al., 'The legal needs of older people in NSW', *Law and Justice Foundation NSW*, 2004 as quoted in Australian Human Rights Commission, 'Submission to the House of Representatives Standing Committee on Legal Affairs regarding Inquiry into Older People and the Law', 2006, available at: <https://www.humanrights.gov.au/inquiry-older-people-and-law#toc6>.

These factors together mean that government, regulators and the public are often unaware of the difficulties being faced by residents, and residents often feel powerless to enforce whatever rights they may have.”

In Consumer Action’s own casework, we have recently conducted two major matters which speak to the complexity and resource intensive process of pursuing retirement housing dispute resolution through VCAT. In the Willow Lodge matter, described above, we estimate that had the matter run to trial it would have cost in the vicinity of \$200,000 to \$300,000. As it is, the matter settled before trial. —While it is yet to be fully costed, there is no question that collective costs will run into hundreds of thousands of dollars—well in excess of retirees (or indeed currently employed citizens) capacity to pay.

To illustrate the length and complexity of the Willow Lodge matter, we include a chronology of the proceedings below:

Willow Lodge—Chronology

No	Date	Event
1.	04/12/2014	Application and Points of Claim filed
2.	19/02/2015	Application and Points of Claim served
3.	27/02/2015	Affidavit of service of Amanda Storey affirmed on 27 February 2016 filed
4.	03/03/2015	Notice of Hearing issued for directions hearing on 18 March 2015
5.	17/03/2015	Orders made by consent adjourning directions hearing listed on 18 March 2015
6.	08/04/2015	Notice of Hearing issued for directions hearing on 6 May 2015
7.	28/04/2015	Respondent's application for orders under s 77 of the VCAT Act (s 77 application)
8.	28/04/2015	Respondent serves affidavit of Sazz Nassimi sworn on 28 April 2015 in support of s 77 application
9.	06/05/2015	Orders made at a directions hearing <i>inter alia</i> that: <ul style="list-style-type: none"> • Respondent file and serve its Points of Defence by 21 May 2015; • Applicants file and serve any affidavits in which they seek to rely on in relation to the s 77 application by 4 June 2015
10.	25/05/2015	Respondent files and serves its Points of Defence
11.	27/05/2015	Orders made upon the Tribunal's own motion listing the proceeding for compulsory conference on 1 July 2015
12.	03/06/2015	Applicants file and serve the affidavit of Amanda Storey affirmed on 3 June 2015 in opposition to the Respondent's s 77 application.

13.	24/06/2015	Orders made by consent to vary the orders made on 6 May 2015 to extend the date to file written submissions in relation to the s 77 application to 8 July 2015
14.	01/07/2015	Parties attend compulsory conference
15.	01/07/2015	Orders made at the compulsory conference <i>inter alia</i> that: <ul style="list-style-type: none"> • The s 77 application be listed before a judicial member as soon as possible; • The proceeding be transferred to the civil claims list; • The parties must file and exchange written outlines of submissions not exceeding 4 pages at least 7 days prior to the date set for the s 77 application
16.	12/08/2015	Respondent serves request for further and better particulars of points of claim
17.	16/09/2015	Notice of Hearing issued listing s 77 application for hearing on 8 October 2015
18.	30/09/2015	Application filed by the Respondent for orders that the applicants provide further and better particulars for their points of claim dated 4 December 2015
19.	30/09/2015	Respondent serves Affidavit of Amelia Strano affirmed on 28 September 2015
20.	01/10/2015	Applicants file and serve their submissions in opposition to the Respondent's s 77 application
21.	06/10/2015	Orders made in Chambers that in the event that the Respondent's s 77 application is unsuccessful, the Respondent's application for further and better particulars of points of claim be listed for hearing on a date to be fixed
22.	07/10/2015	Respondent files and serves their submissions in support of the Respondent's s 77 application
23.	08/10/2015	Hearing of the Respondent's s 77 application
24.	08/10/2015	Orders made at the hearing of the s 77 application <i>inter alia</i> that: <ul style="list-style-type: none"> • The s 77 application be dismissed • The Respondent pay the applicants' costs of the s 77 application • By 11 December 2015, the parties complete discovery • The Respondent's application for further and better particulars of points of claim be adjourned until further order
25.	12/10/2015	Notice of Hearing issued for the Respondent's application for further and better particulars of points of claim listed on 9 December 2015
26.	07/12/2015	Orders made in Chambers that the directions hearing listed on 9 December 2015 be adjourned to a date to be fixed after 24 March 2016

27.	11/12/2015	Applicants file and serve their list of discoverable documents
28.	14/01/2016	Applicants file and serve application for urgent directions hearing seeking orders <i>inter alia</i> that the Respondent file and serve its list of documents
29.	14/01/2016	Affidavit of Amanda Storey affirmed on 14 January 2016 filed and served
30.	22/01/2016	Orders made in Chambers that the proceeding be listed for a directions hearing on 29 January 2016
31.	25/01/2016	Notice of Hearing issued listing proceeding for directions on 29 January 2016
32.	25/01/2015	Respondent files and serves its list of discoverable documents
33.	27/01/2016	Respondent serves amended list of discoverable documents
34.	28/01/2016	Affidavit of Amanda Storey affirmed on 28 January 2016 filed and served in support of application dated 14 January 2016
35.	29/01/2016	Orders made at the directions hearing <i>inter alia</i> that: <ul style="list-style-type: none"> • Respondent pay the applicants' costs of the application dated 14 January 2016; • By 23 February 2016 the Respondent file a supplementary list of documents relevant to specified documents; • By 11 March 2016, the Applicants are to file and serve their witness statements, save for the fourth and fifth applicants which must be filed on or before 24 March 2016; • By 22 April 2016, the Respondent must file and serve its witness statements in reply.
36.	26/02/2016	Notice of Hearing issued listing proceeding for trial on 18 July 2016 with an estimated duration of 20 days
37.	03/03/2016	Notice of Hearing issued listing proceeding for trial on 18 July 2016 with an estimated duration of 25 days
38.	11/03/2016	Applicants file and serve 14 witness statements
39.	24/03/2016	Applicants file and serve witness statements for fourth and fifth applicants
40.	15/04/2016	Applicants file and serve supplementary list of discoverable documents
41.	24/04/2016	Applicants file and serve their Amended Points of Claim

42.	05/05/2016	Orders made by consent <i>inter alia</i> that: <ul style="list-style-type: none"> • The Applicants have leave to file their amended points of claim dated 22 April 2016; • By 6 May 2016, the respondent shall file a supplementary list of documents relevant to specified documents; • By 6 May 2016, the respondent shall file and serve its witness statements in reply; • By 13 May 2016, the respondent shall file and serve its Amended Points of Defence; • By 20 May 2016, the applicants shall file and serve their witness statements in reply; • By 13 June 2016, the respondent shall file any expert report relied on • By 4 July 2016, the applicants shall file any expert report relied on
43.	06/05/2016	Respondent files and serves supplementary list of discoverable documents
44.	06/05/2016	Respondent serves 3 unsigned witness statements of Shirley Horsburgh, Arthur Horsburgh and Jim Hutchinson
45.	15/05/2016	Respondent serves signed witness statements of Shirley Horsburgh and Arthur Horsburgh
46.	17/05/2016	Respondent files and serves Amended Points of Defence dated 16 May 2016
47.	20/05/2016	Applicants file and serve 14 witness statements in reply
48.	01/06/2016	Applicants file and serve urgent application seeking orders <i>inter alia</i> that the Respondent provide further and complete discovery
49.	02/06/2016	Applicants file and serve affidavit of Tom Willcox affirmed on 1 June 2016 in support of application dated 1 June 2016
50.	03/06/2016	Notice of Hearing issued listing Applicants' application dated 1 June 2016 for hearing on 9 June 2016
51.	09/06/2016	Hearing of Applicants' application dated 1 June 2016
52.	09/06/2016	Orders made at the directions hearing <i>inter alia</i> that: <ul style="list-style-type: none"> • By consent, that the parties attend mediation of the proceeding on 14 June 2016; • By 17 June 2016, the Respondent file and serve any Amended Points of Defence; • By 16 June 2016, the Respondent file and serve a Further Supplementary List of Documents on the Applicants; • By 4 July 2016, the Applicants may file any Further Supplementary List of Documents; • By 15 July 2016, the Respondent must file and serve certain witness statements; • The hearing date of 18 July 2016 is confirmed.

53.	14/06/2016	Parties attend mediation
54.	18/07/2016	Orders made in Chambers by consent that the proceeding be listed for a directions hearing on 16 August 2016 (among other orders)
55.	15/08/2016	Orders made in Chambers by consent that the proceeding be listed for a directions hearing on 20 September 2016 (among other orders)
56.	16/09/2016	Orders made in Chambers by consent that the proceeding be listed for a directions hearing on 24 October 2016 (among other orders).
57.	24/10/2016	Parties attend final directions hearing. Orders made by consent that the proceeding be struck out with a right of reinstatement

Consumer Action routinely fields complaints from elderly consumers who have found VCAT unhelpful and intimidating, or otherwise unsatisfying, and have also failed to achieve a just outcome with the assistance of CAV.

The key issues raised with Consumer Action by elderly consumers include complexity of contracts, unfair fees, inadequate repairs and maintenance, lack of financial accountability and poor financial management. Lack of staff training and qualifications, bullying and intimidation by management (and other residents) and delays to sale of property also form common complaints.

One such matter is described below:

Alleged interference in sale of property

Marie* lives alone in a retirement village, and the relationship between her and management has long since broken down. Marie feels bullied and powerless in her village, and feels that she has 'no rights'.

Marie had previously been involved in a VCAT action by residents against management of the village, contesting fee increases. The residents were unsuccessful in that action. Marie described the VCAT experience as stressful and intimidating, and felt that because they did not have lawyers the residents' concerns had not been taken seriously. As a result, Marie was reluctant to repeat the experience and did not want to lodge a new complaint with VCAT.

Marie's current complaint concerned her attempts to sell her property to leave the village, and her belief that village management had interfered in those attempts.

In early November 2015 a potential buyer made enquiries about purchasing property at the village as a result of seeing Marie's property advertised on a sign outside the village.

The potential buyer's inquiry was fielded by the manager of the village. The manager took the buyer through to the village community room, and when he asked to view Marie's unit, the manager replied that the unit was very run down and over-priced. The potential buyer did not view the unit at that time.

A week or so later, the potential buyer was again inspecting the advertising boards out the front of the village when he was approached by one of the owners of the village.

The potential buyer was accompanied by his daughter on this second occasion. The village owner opted to show the potential buyer and his daughter through another unit at the rear the village. The owner explained that the rear unit was in the final stages of renovation, and was to be sold leasehold.

When the potential buyer again requested to see Marie's unit (the advertised property), the village owner discouraged him from doing so, explaining that Marie's unit was run down and over-priced.

The potential buyer's daughter later found Marie's unit advertised on realestate.com.au and the potential buyer arranged for an inspection through a real estate agent.

On inspection of the property, the potential buyer found that in his view the property was well maintained, modern and appeared to be very good value for money.

Based on the potential buyer's version of events, (which the potential buyer had related to both Marie and the real estate agent), the village owner and manager may have breached section 32C of the Retirement Villages Act.

Clause 32C of the Retirement Villages Act (VIC) 1986 ("Act") states:

32C Manager not to interfere in sale

(1) A manager of a retirement village who is not appointed as an agent for the sale of the premises of an owner resident in the village must not interfere with the sale of the premises.

Penalty: 60 penalty units

The Act defines a manager as:

- (a) A person who manages a retirement village; and*
- (b) if there is no such person, the owner of retirement village land;*

Marie wrote to both the village manager and the village owner requesting that they desist from any further interference in the sale of her property, and advising that the matter has been reported to the relevant authorities. She was suffering from stress and anxiety as a result of the events around the sale of her property, and did not wish to have any further involvement with VCAT.

In January 2016 Consumer Action lodged a complaint with CAV on Marie's behalf.

CAV investigated the matter and spoke with Marie, the real estate agent, and the village manager.

CAV subsequently wrote to the village owner to the village owner, notifying them of section 32C of the Act and advising that if further non-compliance was identified then enforcement action would be considered.

Marie was disappointed with this outcome, and felt that enforcement action should have been taken in this instance. Her collective experiences with VCAT and CAV have left her feeling powerless and without recourse to justice.

Marie has expressed a view that the ongoing difficulties with village management have affected her physically and emotionally.

*—Name changed for privacy purposes.

Consumer Action believes that a Retirement Housing Ombudsman (**RHO**) scheme is needed to address the current shortfall in access to justice for retirees.

The RHO should be industry funded and have broad terms of reference, covering residents of residential parks, retirement villages, rental villages and Independent Living Units.

Through our experience with the Financial Ombudsman Service (**FOS**), the Telecommunications Industry Ombudsman (**TIO**), and the Energy and Water Ombudsman Victoria (**EWOV**) we have seen first-hand how industry funded ombudsman schemes can provide free, accessible and authoritative dispute resolution services to vulnerable consumers. Without ombudsman schemes, hundreds of thousands of people would have been left with no avenue for redress other than courts, or more likely, because of cost and other access barriers, would have been left with nowhere to turn.

The need for such a service in retirement housing is evident, and will continue to grow as the population ages. An RHO that has the power to make binding decisions would provide residents with access to free and independent dispute resolution without the need for lawyers. It would also create incentives for operators to settle disputes internally, as they would incur costs each time a case is brought against them.²⁰

We also note that in the case of an RHO, consumers should have the power to nominate a representative (such as a relative, or a friend) to represent them in the matter if they do not feel capable of managing the dispute themselves. This is an important consideration for a consumer base that includes very elderly and sometimes infirm consumers.

The RHO would be expected to comply with the *Benchmarks for Industry-based Customer Dispute Resolution*.²¹ These benchmarks set out minimum standards in relation to accessibility, independence, fairness, accountability, efficiency and effectiveness.

3. Legislative framework and clarity in contracting

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.

3.1 The problem

²⁰ Productivity Commission (2015) *Access to Justice Arrangements: Inquiry Report Overview*, p. 11, available at: <http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>.

²¹ The Treasury (March 2015) 'Key Practices for Industry-based Customer Dispute Resolution', available at: <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/key-pract-ind-cust-dis-reso>

In previous submissions, Consumer Action has identified this legislative complexity as a defining issue in the retirement housing sector.²² 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'²³ 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.²⁴

To illustrate the complexity of the legislative framework covering Victoria's retirement housing sector, we attach a diagram showing how various Acts and Regulations relate to each other, (and the housing types that they cover), at **Appendix A** to this submission.

A common area of disputation lies in housing complexes where the *Retirement Villages Act 1986* (Vic) overlaps with the *Owners Corporation Act 2006* (Vic), leading to confusion around applicable fees—and the limits which apply to those fees. Disputes can arise between residents and management as to who is liable for the costs of maintenance, repairs and replacement works in a retirement village are generally caused by a lack of clarity in residence contracts, including the very ambiguous definitions of variable outgoings and refurbishment fund.

Consumer Action has dealt with a number of matters of this nature. In one matter, a management company had failed to distinguish between management fees (levied under the *Retirement Villages Act*) and body corporate fees (under the *Owners Corporation Act*). More clearly distinguishing between different fees would have resolved much of the confusion.

In another matter, our client argued that the fees charged by management were not calculated in accordance with the *Retirement Village Act* and regulations. Argument around the correct interpretation of the law and regulations relating to what management could charge was extremely complex. In our view, very few retirement village residents would be capable of understanding their rights under these provisions without expert assistance.

Complexity and lack of transparency in retirement housing contracting was recently addressed by Consumer Affairs Victoria (**CAV**), resulting in reforms which came into effect on 1 July 2014.

Under the reforms, Victorian retirement villages are required to provide standardised fact sheets and enhanced disclosure statements, clearly setting out the details of financial obligations that residents will incur in choosing their village. Importantly, CAV has taken enforcement action to ensure these disclosures are provided.²⁵ CAV also provides online resources²⁶ to assist residents in understanding how retirement villages operate, and the fees and charges that will apply. While

²² Joint submission made by Consumer Action, COTA and RRVV to CAV re: Proposed remake of Retirement Village Regulations, 31 March 2015.

²³ *Retirement Villages Act 1986* (Vic) s 3.

²⁴ 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

²⁵ CAV, *News update: Illawong Lakeside Retirement Pt Ltd, Illawong Retirement Group Pty Ltd and Vladymir Martyniuk, Court action*, 8 June 2016, available at: <https://www.consumer.vic.gov.au/news-and-events/news-updates/illawong-lakeside-retirement-pty-ltd-court-action>.

²⁶ Available at: <https://www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages>,

these measures were positive, there are limits and pitfalls when relying heavily on disclosure as a means of consumer protection.

Consumer Action continues to encounter widespread confusion and misunderstanding amongst retirement housing residents regarding their housing contracts. This is likely due to the complexity and variance of the DMF business model, along with the complex legislative framework applying to the area—but can also be attributed to poor quality fact sheets and disclosure statements, which do not always reflect contracts accurately. Where this occurs, the documents have the opposite effect, adding layers of complexity and confusion. Inconsistencies mean that disclosure documents have to be carefully cross-checked with the contract, effectively defeating the purpose of their implementation. Even retirees who have sought independent legal advice before entering a village frequently report misunderstandings. It is often contended that the advice received is poor as it is difficult to find solicitors with the necessary expertise.

Of course in many cases, retirees are not in a position to afford legal advice. They instead make a major life decision by entering into a complex contractual arrangement with a far from perfect understanding of what they are signing up for. Low income consumers who are considering moving into not-for-profit retirement villages are highly unlikely to be able to afford professional advice.

A 2011 Housing for the Aged Action Group survey of (mostly low income) residents of Independent Living Units found that 79% did not seek any advice before moving into their new accommodation, and 69% said that they had no help understanding their contract.²⁷ It is unrealistic to expect these residents to cross-check their contracts with disclosure documents. More likely, disclosure documents will be relied upon as a decision making 'heuristic', leading to a false sense of security and a potentially poor, and damaging decision.

3.2 The solution

Consumer Action believes legislative reform is necessary to clarify the legislation that applies to various forms of retirement housing, which in turn will reduce contractual misunderstandings and disputation. We are aware that the overlap of the *Retirement Villages Act 1986* and the *Owners Corporation Act 2006* is currently under review by CAV, and look forward to reform that may be undertaken in that area. 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.

A comparison of Victoria's retirement village legislation with similar legislation in other Australian jurisdictions, (and New Zealand), reveals that Victoria is noticeably lagging in a number of key areas. These include eviction processes, investigation of complaints, operation of resident's committees, and oversight of village budgets. In addition, Victoria is rare in allowing charitable and not for profit organisations to apply for exemptions to all or part the state's retirement village act. Only the Northern Territory and South Australia mirror this provision, although in both of those cases, Ministerial approval is required. In Victoria, this power sits with the Director of CAV.

²⁷ Housing for the Aged Action Group (HAAG), '*Speak Out—Have Your Say on Housing: The Not For Profit Retirement Housing Community Education Project, Eastern Metropolitan Region of Melbourne*', 2011, pp. 13-14.

In order to compare retirement village legislation across Australia and New Zealand, Consumer Action obtained pro bono assistance from one of our panel firms to update a table we had previously prepared, comparing retirement village legislation across various jurisdictions. The table is presented as a ‘traffic light document’, highlighting areas where various acts are effective or deficient. We attach that document as **Appendix B** to this submission, to demonstrate that a review of the *Retirement Villages Act 1986* is justified, and could deliver significant benefit to the sector.

While it is sometimes claimed that standardising contracts could result in reduced competition and innovation in products and services offered, we believe that standardising contracts can improve competition by enabling consumers to compare like products with like, without complex differences in contractual construction and presentation. This approach has been taken in sale of land and residential tenancies contracting, and we see no reason why it should not be applied in retirement housing. While the *Retirement Villages (Contractual Arrangements) Regulations 2006* (Vic) stipulate prescribed terms and layout for residence and management contracts, they exclude lease agreements and contracts of sale.²⁸

Standardised fact sheets and disclosure documents do not appear to have had the desired impact, and there is a genuine need to address the length and complexity of the contracts themselves. At the very least, basic guidelines should be developed to ensure that contracts are expressed in plain English and meet a certain standard of readability. 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.

It is important that the unique vulnerability of the retirement housing consumer base is taken into account. Elderly citizens who are often going through a traumatic and upsetting time of their lives should not be expected to navigate complex and lengthy legal documents, (often without any legal assistance), in order to make significant life decisions. If made poorly, those decisions can have a disastrous impact on their lives.

4. Training and qualifications for managers and operators

Victoria’s retirement housing sector currently lacks any formal qualification requirement for managers of retirement villages and residential parks.

4.1 The problem

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 and elder abuse 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 or unwilling to air legitimate grievances.

²⁸ *Retirement Villages (Contractual Arrangements) Regulations 2006* r. 8G.

Consumer Action proposes a qualification system for managers of retirement villages and residential parks. These are specialised roles, dealing with a specific consumer base which requires particular skills and knowledge. Village and park managers should have a strong knowledge of their statutory obligations and training in the effective management of their facility—ranging from financial matters, to their interactions with individual residents and residents committees, to the management of other staff. Managers carry significant administrative responsibility, and are required to balance their managerial role with a sales function. Under the *Retirement Villages Act 1986*, village managers must also manage an internal dispute resolution process. Finally, village and park managers also require basic health and fitness levels, and practical knowledge around health management, first aid and basic facility maintenance.

Professionalising the role of village and park managers would be an important acknowledgment of a challenging, demanding and unique role. Ongoing professional development and registration would also be a powerful way to ensure that management standards across the sector are maintained, and protect elderly residents from abuses of the power imbalance that can arise in the resident/manager dynamic.

As it currently stands, village and park managers require no more formal qualifications to perform their role than does a retail shop assistant—with the exception of first aid requirements. Given the observed and anticipated growth of the retirement housing sector, this means that retirement villages and parks could be subject to management by inexperienced managers in a challenging role, with no training, and no clearly established professional standards for their performance to be measured by.

4.2 The solution

The current parliamentary inquiry represents an excellent opportunity to move towards professionalising the role of facility managers in the retirement housing sector. This could be achieved by establishing a Certificate IV qualification under the Australian Qualifications Framework²⁹, and establishing a register of professionally qualified managers with a requirement to maintain their qualification through ongoing professional development. This system could also provide a mechanism to bar managers from the register, if they can be shown to have breached their professional duties in a significant manner. This 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.

5. A Code of Conduct

In addition to implementing a training and qualification requirement for park and village managers, Consumer Action recommends that a Code, or Codes of Practice be developed to prescribe standards that must be met under relevant legislation in the retirement housing sector.

Codes of Practice provide a clear outline of minimum industry standards. Crucially, they do this in a form that is easily understood and communicated (far more effectively than an Act, or set of Regulations—for example), and operate as a digestible summary of the obligations and responsibilities of the various parties engaged in the activity to which the code applies. In this way,

²⁹ <http://www.aqf.edu.au/>

Codes of Practice can play a role as a “manual” that communicates legislative standards, far more effectively than the legislation itself does.

While South Australia and Western Australia currently employ Codes of Conduct, the *Retirement Villages Code of Conduct 2008 (Code)*, administered by the New Zealand Ministry of Business, Innovation and Employment arguably provides the clearest outline of responsibilities for stakeholders. Certainly, it is the most clearly expressed of the three—and has clearly been designed to be actively used by the people to which it applies, rather than to simply exist as a statutory document, indecipherable to many without the benefit of legal training or advice.

The Code is established under the *Retirement Villages Act 2003* (New Zealand), and carries considerable legal force, prevailing over any less favourable provision in a resident’s occupancy agreement. The legal status of the Code is set out in section 6, reproduced below (section references in the text are to *the Retirement Villages Act 2003* (New Zealand)).

6. Legal status of the Code of Practice

1. *This Code of Practice is a legal document. Every operator of a retirement village must meet the requirements set out in the Code of Practice. Section 92(2)(a)(i)*
2. *The Code of Practice is enforceable as a contract by a resident and prevails over any less favourable provision in the resident’s occupation right agreement. Section 92(2)(b)*
3. *The Code of Practice must be given effect to in any occupation right agreement offered to a resident. Section 92(2)(c)*
4. *The operator must make a copy of the Code of Practice available to every resident and intending resident on request. Section 92(4)*
5. *An operator may be exempted from meeting the requirements of any provision of this Code of Practice, if an exemption has been granted by the Registrar. Sections 93(1)-(3)*
6. *A resident can give a dispute notice for a breach of the Code of Practice. Section 53(1)(d) and 53(3)*
7. *The Retirement Commissioner monitors the effects of the Code of Practice.*

The purpose of the Code is similarly clearly expressed, in section 4 of the Code:

4 Purpose of the Code of Practice

1. *This Code of Practice is written for people who own, manage, oversee, or live (or intend to live) in retirement villages, in particular:*
 - a. *the operator*
 - b. *residents and intending residents (and their representatives)*
 - c. *statutory supervisors.*
2. *The purpose of this Code of Practice is to set out the minimum requirements that operators of retirement villages must carry out, or make sure are carried out, to meet their legal obligations under the Retirement Villages Act 2003.*

Consumer Action submits that the development of a Code of Practice based on the New Zealand model for retirement villages, and another Code for residential parks, would represent a significant step forward in industry standards in Victoria—both to operators, and to residents. In conjunction with a training and qualification regime for managers, this could significantly lift management standards in retirement villages and parks—and would empower residents to assert their rights under applicable legislation. A copy of the New Zealand Code is attached to this submission at **Appendix C** for ease of reference.

Of course, to be effective, any code of practice would have to be accompanied by a robust and sufficiently-resourced compliance and monitoring regime. This responsibility could sit with an industry regulator, but it may benefit by having a more specialist administrator which provides more attention and focus. This is discussed further in part 7.

6. Financial oversight and auditing

Financial mismanagement is a consistent theme of retirement housing related complaints fielded by Consumer Action.

In two recent and significant cases, residents were billed for unjustified charges. In one case, involving Dromana Holiday Village, it was clear that accounting practices and record keeping were lax, and there was little to no oversight to ensure that the park operator justified charges made for maintenance and other services.

Case Study: Dromana Holiday Village

Our client and her lease

Our client is an 89 year old widow who lives at the Dromana Holiday Village, Dromana, Victoria. She moved there with her late husband in 2007. She purchased a lot with a 99 year lease with a 99 year option to renew and built a two bedroom and two bathroom home on her lot. Our client is a pensioner and pays annual park fees on an interim basis.

The Dromana Holiday Village

The Dromana Holiday Village has approximately 210-220 lots. Some of the leaseholders own their own lots and live there on a permanent basis, other leaseholders rent out their lots to long-term tenants or holiday-goers. The village has a variety of facilities including an indoor and outdoor swimming pool, a BBQ area, a community room and amenity blocks containing a laundry and toilets. The Dromana Holiday Village is not regulated by the *Residential Tenancies Act 1997*, the *Retirement Villages Act 1986* or the *Owners Corporations Act 2006*.

The dispute

The leaseholders' annual liability to pay their park fees is determined pursuant to the "total cost of ownership" (LTCO) clauses in their lease. This clause is opaque and difficult to understand.

The LTCO clause permits the landlord to reasonably determine the total cost of owning and operating the land, any improvements on the land and any services being provided from the

land including reasonable allowances for costs, liabilities and expenses that the landlord reasonably expects to incur. The lot holders' annual liability is calculated by multiplying the LTCO by the lot liability allocated to each individual lot, and dividing that figure by the total lot liability.

In 2007, our client's annual fees were \$2,180 per year (\$41.92 per week). These gradually increased each year reaching \$2,697 (\$51.87 per week) in the 2012-2013 financial year.

However, in April 2013, our client's annual fees were increased to \$4,280 per year (\$82.31 per week) for the 2013-2014 financial year – equating to a 63% increase in one financial year. The landlord continued to charge those annual fees for the 2013-2014, 2014-2015 and 2015-2016 financial years. In 2016, the landlord notified the residents that their fees would increase by \$6-\$7 per week for the 2016-2017 financial year, signalling a further 7.3% to 7.9% increase.

No new services or amenities were provided to the residents at the Dromana Holiday Village during 2013 to 2016 period.

The litigation

On 17 June 2015, our client filed an application in the Victorian Civil and Administrative Tribunal (**VCAT**) asking that VCAT declare what the LTCO should be for the Dromana Holiday Village for the 2013-2014, 2014-2015 and 2015-2016 financial years.

Our client made four types claims against the landlord.

First, that the annual fees (or LTCO) claimed by the landlord for those financial years included expenses that were unreasonable and/or not properly incurred.

Second, that the landlord had failed to make a determination of the LTCO for the relevant financial years and that the rental increases were not permitted under the terms of the lease.

Third, our client alleged that the landlord had engaged in misleading and deceptive conduct and unconscionable conduct.

Fourth, our client asked VCAT to vary the terms of her lease to make them fairer and more transparent.

On 30 May 2016, VCAT heard our client's application over a 3 day trial. As at the date of filing this submission, VCAT has not handed down its decision in the proceeding.

Resources and Access to Justice

At its simplest, our client claimed that the annual fees charged by the landlord were too high. The fees had increased by over 60% in one year and there had been no commensurate improvement in the services and amenities at the village.

However the complexity of the terms of the contract and the adversarial forum of VCAT required our centre to dedicate considerable resources to prepare our client's claim for trial.

These included:

- A junior barrister and/or a senior solicitor appearing at multiple interlocutory disputes, which are set out in further detail below;
- A QC, junior barrister and a senior solicitor to appear at the 3 day trial with litigation support provided by graduate lawyers;
- An expert accounting witness preparing an expert report (taking approximately 110 hours to complete), giving evidence and being cross-examined at the trial for approximately 5 hours;
- Our client and her daughter giving evidence at the trial and being cross-examined by the landlord's senior barrister;
- A senior solicitor and graduate lawyer attending a full day compulsory conference (also known as a mediation); and
- The provision of extensive litigation support including briefs to barristers, briefs to the expert witness, collating and analysing the parties' discovery and preparing court books for trial.

Despite VCAT being less formal than a Court, elderly consumers and their advocates are required to dedicate significant time, expertise and costs to have their claim heard at VCAT.

Most elderly consumers would be unable to access, and pay for, an accounting expert to prepare a 49 page report and to give evidence at a trial. Ombudsman schemes have specialist expertise and consumers are not burdened with the same evidential onus as a Court and Tribunal.

In this case, the parties appeared at multiple interlocutory disputes which were hard fought. These interlocutory disputes included hearings about discovery of documents, applications for leave to file a counterclaim and to split the trial into two trials, and an application by the landlord to adjourn the trial to a later date. These applications were highly technical. An Ombudsman scheme is not hampered by the same civil procedure rules as a Tribunal and Courts. This means that the parties will spend less time arguing about technical issues, and more time resolving the actual dispute. Successive interlocutory applications are resource intensive and there is a strong risk that self-represented elderly consumers would be discouraged from bringing their application to trial.

Finally, an Ombudsman scheme is a more appropriate forum for elderly consumers. Our client and her daughter gave evidence at the trial and were cross-examined by the landlord's barrister. This alone would deter many 89 year old widows from bringing a complaint against their landlord to VCAT. An Ombudsman scheme would allow elderly consumers to make written submissions, and to appear by telephone conference if required.

The Dromana Holiday Village case does not seem to be an isolated incident. Anecdotally, we are advised that it is common for park and village operators to contract out services to related entities, and then pay above market rates for those services. This is yet another area where the vulnerability

and perceived powerlessness of the consumer base, (in conjunction with a lack of regulation and oversight), can easily lead to financial exploitation. It also speaks to the lack of professional training and qualifications currently required of park and village owners and managers.

In New Zealand the problem of financial mismanagement in the retirement village sector has been partly met with the establishment of statutory supervisors.

Under s38(1) of the *Retirement Villages Act 2003* (New Zealand):

“The operator of a retirement village must appoint a statutory supervisor who holds a licence under the Financial Markets Supervisors Act 2011 that covers supervision of the village, unless the operator has obtained an exemption under section 41.”

Sections 42 and 43 of the *Retirement Villages Act 2003* (New Zealand) set out the duties and powers of the statutory supervisors respectively.

Under section 42 statutory supervisors are required to:

- monitor the financial position of the village,
- act as an independent stakeholder for deposits and progress payments by residents to operators, and
- report annually to the Registrar of Retirement Villages and residents on the performance of its duties and the exercise of its powers.

Statutory supervisors are required to exercise reasonable care and skill to ascertain that the financial position of the village, the security interests of the residents, and the management of the village are adequate.

If the statutory supervisor believes the financial position of the retirement village, the security interests of the residents, or the management of the village is inadequate then under section 43, they have the power to:

- direct the village operator to supply all residents, (or their nominated representatives), with the information that the statutory supervisor may specify,
- direct the operator to operate the retirement village in a specified manner, or
- apply to the Court for an order under s43A of the Act.

Section 43 also grants the statutory supervisor the power to veto the publication or distribution of an advertisement, disclosure statement, occupation right agreement or code of practice which they believe is inconsistent with the Act or regulations.

Section 43A allows the court (defined as the High Court of New Zealand) to make a range of orders at the application of a statutory supervisor.

These include:

- imposing restrictions on the activities of operators (including restrictions on advertising) that the court thinks are necessary to protect the interests of residents,
- directing the operator to convene a meeting of residents (and give any other directions it thinks fit relating to the conduct of that meeting) for the purpose of:
 - enabling the statutory supervisor to present the information or proposal that the court or statutory supervisor thinks necessary or appropriate for the residents interests, and
 - obtaining the opinions and directions of the residents.
- restraining the transfer of an interest in all or any part of the retirement village.
- removing a receiver or manager of the retirement village.

Statutory supervisors form part of a well-developed framework of regulatory oversight of the retirement village sector in New Zealand, which also encompasses the Retirement Commissioner and the Registrar of Retirement Villages. Statutory supervisors themselves are held to rigorous professional standards, and are regulated by the *Financial Markets Supervisors Act 2011 (New Zealand)*.

The purpose of the *Financial Markets Supervisors Act 2011 (New Zealand)* is to:

... protect the interests of product holders, and of residents of retirement villages, and to enhance investor confidence in financial markets and retirement villages, by—

(a) requiring persons who wish to be appointed as supervisors to be capable of effectively performing the functions of supervisors; and

(b) requiring supervisors to perform their functions effectively; and

(c) enabling supervisors to be held accountable for any failure to perform their functions effectively.³⁰

Given the instances of financial mismanagement currently occurring in Victoria's retirement housing sector, combined with the projected growth of that sector (not to mention the strongly deleterious impact such mismanagement has on a highly vulnerable consumer base), there is a strong argument for the establishment of a similar role in Victoria.

Such a role could provide valuable financial oversight of both retirement villages and residential parks, and could play an effective role in ensuring that the DMF business model is not exploited to the detriment of Victoria's retirees.

7. Administrative responsibility for the sector

Taken together, Consumer Action's recommendations would amount to significant regulatory reform of the retirement housing sector. They would also require ongoing work, and monitoring of the sector. In order to achieve this, it would seem sensible to also review administrative responsibility for the retirement housing sector.

³⁰ *Financial Markets Supervisors Act 2011 (New Zealand) s3(1)*.

Currently, CAV administers the *Retirement Villages Act 1986* (VIC), to which the *Australian Consumer Law and Fair Trading Act 2012* (VIC) applies. Amongst other duties CAV is required to keep a register of Victorian retirement villages³¹, and has the power to bring proceedings for breaches of the Act.³² CAV also provides online resources to assist retirees in understanding how retirement villages work, including how to resolve disputes and what fees to expect.³³ CAV also has responsibility for the *Residential Tenancies Act 1997* (VIC), and the *Owners Corporation Act 2006* (VIC), both of which are currently under review.

Victoria also has a Commissioner for Senior Victorians, who administers *Seniors Online*, —a Victorian Government website that aims to be the first port of call online for older Victorians.³⁴ Seniors Online provides information around the seniors card program, seniors events, health information, state government programs and provides an online community space for seniors. The information is well-pitched to its audience, and includes useful advice on how to save on energy bills, how to access support services and health and dietary advice. Seniors Online also conducts important research, and in January 2016 published the report *Ageing is everyone's business: a report on isolation and loneliness among senior Victorians*. Currently, Seniors Online does not appear to provide information about retirement housing, nor does it provide links to the CAV resources.

In South Australia, the Office of the Ageing has responsibility for both the *Office of the Ageing Act 1995* (SA), and the *Retirement Villages Act 1987* (SA). The Office of the Ageing administers a range of programs for elderly South Australians, (including the South Australian Seniors card), and works to a strategic plan—*Prosperity Through Longevity: South Australia's Ageing Plan 2014-2019*. The Office of the Ageing contributes to policy planning and development, and raises issues affecting older people. Through the sa.gov.au online portal, the Office of Ageing provides a range of resources to older South Australians—including an extensive range of fact sheets on retirement villages.³⁵

While South Australia does not have a Retirement Housing Ombudsman, the Office of the Ageing does provide a mediation service—providing parties with independent advice of their rights and obligations under the *Retirement Villages Act 1987* (SA), or assistance in preparing an application to the South Australian Civil and Administrative Tribunal (SACAT) if required. This service cannot make binding determinations but can assist parties to reach agreement by mutual consent—and SACAT generally suggests that mediation be attempted, before hearing the matter. It should be noted that this service does not cover all retirement housing disputes—and is limited to retirement village matters.

In New Zealand, the Retirement Commissioner (appointed by the Minister of Commerce) has responsibility for the Commission for Financial Capability, and oversees the *Retirement Villages Act 2003* (NZ).

³¹ *Retirement Villages Act 1986* (VIC) Part 6C.

³² *Retirement Villages Act 1986* (VIC) s41.

³³ Available at: <https://www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages>

³⁴ Available at: <https://www.seniorsonline.vic.gov.au/>

³⁵ Available at: <http://www.sa.gov.au/topics/seniors/housing-and-help-at-home/aged-care-and-retirement-housing/retirement-housing-information-for-residents>

The Commission for Financial Capability monitors and reports on the retirement village sector, as well as providing complaints handling and dispute resolution services through the appointment of dispute panels (panel members are appointed by the Retirement Commissioner).

Under section 36 of the *Retirement Villages Act 2003* (NZ), the Retirement Commissioner is required to:

(a) to monitor the effects of this Act and the regulations and code of practice made under this Act:

(b) to advise on issues relating to retirement villages when requested to do so by the Minister or required by this Act:

(c) to promote education about retirement village issues and to publish information about such issues:

(d) to collect and publish information relating to any of the functions referred to in this section:

(e) to perform any other function conferred by this Act or regulations made under this Act.

In addition,

(3) Every operator of a retirement village must answer any questions and supply any information relating to the retirement village reasonably requested by the Retirement Commissioner for the performance of the Retirement Commissioner's functions.

One striking feature of the Commission for Financial Capability is its focus on financial security of retirees.

In regulating an industry which is structured to extract maximum wealth from an asset rich consumer base, the New Zealand Commission for Financial Capability is squarely focused on protecting consumers from exploitation, and actively works to advise consumers of their rights.

In addition to administering the Retirement Village Code of Practice, the Commission for Financial Capability also produces a Code of Residents' Rights handout—which summarises resident's rights under the *Retirement Villages Act 2003* (NZ). Village operators are required to provide a copy of the Code or Residents' Rights to all intending residents, along with their disclosure statement. They must also provide a copy to a resident or intending resident if they ask for one. The Code is also available for download, as a handout or in poster form, from the Commission web-site.³⁶ A copy of the Code of Residents' Rights is attached to this submission at **Appendix D** for ease of reference.

Consumer Action raises the examples of South Australia and New Zealand to illustrate that consideration of administrative approaches at the time of this review might assist in more durable reforms to support older Victorians. While both the South Australian Office of the Ageing and the New Zealand Commission for Financial Capability have a focus on retirement villages, there is

³⁶ Available here: <http://www.cffc.org.nz/retirement/retirement-villages/legislation/code-of-residents-rights/>

no reason they could not be assessed as models on which to base a fit for purpose Victorian agency—to cover all forms of retirement housing.

Given the size of the retirement housing sector, its imminent growth, and the legislative complexity of the area, Consumer Action believes there is merit in examining such an approach.

Conclusion

Retirement housing for older Victorians is currently subject to a framework of overlapping legislation, much of which was not drafted with the needs of retirees in mind. The wide-spread DMF model is open to exploitation and requires regulation. Contracts are often lengthy, unclear, and confusing. Many retirees enter into agreements without professional advice and with a fundamental misunderstanding of their contract, often to their great detriment.

Professional standards for park and village management are low or absent, and financial mismanagement can go unchecked. In the event of a dispute, many residents feel there is no appropriate forum to hear their complaint—it is clear that pursuing matters through VCAT can be lengthy, expensive and stressful. A low level of VCAT listings, therefore, does not necessarily reflect a low level of discontent or consumer detriment.

A holistic approach must be taken to reform the retirement housing sector and provide older Victorians with effective consumer protection. The DMF model must be strictly regulated to prevent exploitation, and legislative reform must be undertaken to clarify residents' rights. Contracts also need to be simpler and clearer—and disclosure documents improved to reduce confusion and the need for cross-checking.

Training and qualification standards should be developed for retirement village and residential park managers, and the New Zealand concept of the 'statutory supervisor' should be adopted to address financial mismanagement.

A Code, or Codes, of Practice should be developed to provide clear and accessible guidance for both residents and operators, and a Retirement Housing Ombudsman should be established to resolve disputes simply, and at no cost to residents.

Finally, a dedicated agency should be established to co-ordinate this work, and provide ongoing monitoring of the sector.

The retirement housing sector will expand substantially in the next five to ten years as baby boomers transition to retirement living. Consumer Action is aware that the matters we encounter represent only a very small proportion of the difficulties faced by Victoria's retirees, and that a large number of complaints and disputes go unreported, and unresolved. The impact of these difficulties can be extreme, and can have a devastating impact on vulnerable Victorians.

To properly serve this growing need, Victoria needs a comprehensive reform approach, and should take the opportunity to establish a regulatory and administrative framework to protect the housing and financial interests of older Victorians both now, and into the future.

Please contact Zac Gillam, Senior Policy Officer on 03 9670 5088 or at zac@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



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Attachments:

- **Appendix A:** Victorian retirement housing sector – legislative framework diagram.
- **Appendix B:** *Retirement Villages Act 1986* (Vic) – “Traffic light document”.
- **Appendix C:** New Zealand Retirement Villages Code of Practice 2008.
- **Appendix D:** New Zealand Code of Residents’ Rights.