Retirement housing background paper

In Victoria the terms 'retirement housing' or 'retirement living' cover a myriad of housing types, far beyond the traditional retirement village model that most people are familiar with.

Unfortunately many retirement housing types receive little recognition from Government and key stakeholders causing legislative and policy gaps.

This paper will highlight the complexities found in the retirement housing sector, and the need for a thorough study/investigation into the current market in Victoria, to ensure the Government understands the retirement housing issues faced by older Victorians.

Fundamentally Victorians need strong legal protections in housing provision to enjoy tenure security and quality of life during retirement.

In 2005 Consumer Affairs Victoria (**CAV**) developed a Residential Accommodation Strategy (**RAS**) to review various forms of residential housing. Since that time, over ten years ago, the housing sector for older people has become even more complex. Industry and social housing providers have continued to provide housing options to suit an ever diversifying market. Our recommendations in this paper support the need for a similar market study/investigation that will ensure vulnerable, older residents are ultimately provided with adequate protection.

<u>Background</u>

During the 1950's the Australian Government passed the *Aged Persons Homes Act 1954* (**APHA**) which funded churches, charities and not-for-profit organisations to provide housing for older people. As a result 34,700 Independent Living Units (**ILUs**) were built over a 30 year period providing "affordable, independent housing for lower-income older people" (Jones et al., 2010, p26). In Victoria approximately 9000 units were built during this period. However, over time ILU stock in Victoria has reduced to roughly 6200 units (a 2004 estimate) due to the sale of housing caused by a lack of access to capital funds for refurbishment.

During the 1980's funding provided under the APHA ceased and in its wake resident-funded retirement accommodation first emerged, provided by both not-for-profit organisations and private companies. Retirement villages became the primary form of retirement housing over the next two decades, with the main appeal being the combination of independent living and on-site recreational and passive support services. Another term for this is 'service integrated housing' which refers to housing for older people that combines accommodation and services.

According to Jones, "In the Australian context the main form of service integrated housing is the retirement village. However, 'retirement village' is now an umbrella term that encompasses a range of different kinds of service integrated housing" (2010, p2).

Other forms of housing, such as pension-plus and pension-only special residential services were formed that provided higher levels of support but not direct aged care. Similarly rental villages emerged in 2000 (approximately 30 villages were built across the Eastern states of Australia including Victoria) as a response to older people on lower incomes becoming increasingly interested in service integrated housing. This model was aimed at pensioners with few assets and was developed by private companies offering tenancy arrangements that included the provision of meals and a linen service.

Another form of retirement housing, known as 'residential parks' or 'residential villages', also emerged in Victoria around the 1980's and onwards, developing from the coastal holiday lifestyle options most prevalent on the New South Wales and Queensland coasts. The term 'residential parks' emerged when people, mostly retirees, began living permanently in caravan parks where they owned a moveable dwelling but leased/rented the site on which it stood. Over time parks began to choose whether to provide mainly tourist sites or to offer permanent living. The evolution towards permanent living created the development of 'residential villages' and this form of housing began in Victoria in the late 1990's early 2000's.

Residential villages are purpose built villages for permanent living where people own their moveable dwelling and lease the site on which it stands. Villages are marketed at people over 55 years of age often offering a more affordable retirement lifestyle than retirement villages, although this is now changing significantly.

This wide range of housing now spans from independent living options through to various types of supported accommodation, offering various forms of recreation, care and assistance. There are many similarities found in housing suitable for retirees but also a great diversity based on financial arrangements and services required by residents.

Never before has the Victorian Government analysed the trends in this market to determine whether there is a need to bring them together under a common retirement housing umbrella to fill the gaps that appear across the spectrum. It is timely to address this issue and form recommendations to better protect older residents now and in the future.

References:

Jones, A., Howe, A., Tilse, C., Bartlett, H. and Stimson, B. (2010) *Service integrated housing for Australians in later life.* Australian Housing and Urban Research Institute

McNelis, S. (2004) *Independent Living Units: The Forgotten Social Housing Sector.* Australian Housing and Urban Research Institute

The following pages provide a brief description of the main retirement housing options available in Victoria.

For profit retirement villages

Current situation:

For profit retirement villages, also known as resident funded retirement villages, are managed by private companies and make up approximately 40% of the retirement village sector, containing approximately 70% of the total number of units.

Generally these villages comprise large clusters of units – 1, 2 and 3 bedroom – in a gated environment with a number of communal facilities and spaces. Ingoing contributions generally start from $200,000 and will depend on the location, services provided and units developed.

Ongoing fees and exit fees are also paid. The most common exit fee is the Deferred Management Fee (**DMF**) which originated in this sector. The DMF was initially intended to enable retirees to purchase a unit below market value and for the village to recover upfront losses. Today though units tend to be sold at, or near, market value and agreements still have DMFs included.

Approximately 80% of retirement villages are loan/lease/license arrangements, with the remaining villages either rental or strata title agreements.

Retirement villages are covered by the *Retirement Villages Act 1986* (**RVA**) but for strata title residents the *Owners Corporation Act 2006* (**OCA**) is also applicable.

Key considerations:

Contracts are complex and can make it difficult for older people to understand the significant financial investment they are making when they enter a village. The RVA is vague and supports the inequitable financial model retirement villages are built upon. The RVA relies heavily on contracts to provide most of the rights and obligations of residents and managers.

Legal advice and support for residents is problematic to obtain due to a lack of affordable expertise, and the domination of industry favoured law firms, meaning many firms are unable to provide advice due to conflicts of interest. Dispute resolution is time consuming and difficult, with disputes having to be heard at the Victorian Civil and Administrative Tribunal (**VCAT**) via the Civil Claims List.

There is often tension in the practical application of the RVA in conjunction with the OCA that also causes concerns for retirement village residents.

In short “there has been no major study of the retirement village industry since 2002” (Jones et al., 2010, p35).

Recommendation:

It is recommended that a thorough market study/investigation be undertaken to better understand this sector. The investigation would consider the current state of the stock, the numbers of villages and units and a current profile of the needs and experiences of the resident population to identify priority areas for reform.

Independent Living Units (ILUs)/ Not-for-profit retirement villages

Current situation

ILUs originally developed under APHA still exist in Victoria although numbers have decreased due to not-for-profit organisations being unable to manage and maintain stock without Government subsidy.

Two models of ILUs have developed over time:

- ILUs under the *Retirement Villages Act 1986* (**RVA**), (also known as not-for-profit retirement villages) and;
- ILUs under the *Residential Tenancies Act 1997* (**RTA**).

Both models have similar characteristics, usually bedsitter or 1 bedroom units in small clusters, with very limited (if any) communal facilities and spaces. The main differences lie in the financial model utilised.

ILUs under the RVA require an ingoing contribution usually up to $200,000 (which has increased over time), payment of ongoing fees and often also an exit fee. In the for profit villages a percentage of the ingoing (or resale/re-letting price) is taken upon exit whereas often in the not-for-profit villages the whole ingoing (or resale/re-letting) amount is taken upon exit.
ILUs under the RTA require ongoing rent to be paid.
Eligibility for entry depends on the managing organisation.

Key considerations:

ILUs under the RTA lack security of tenure although they are often provided on the premise that people can live there as long as they need to. The RTA also does not address community living aspects which are a main feature of ILUs.

ILUs under the RVA rely heavily on contracts as the RVA is vague and focuses mainly on financial investment. Day to day rights, such as repairs, maintenance and privacy are not regulated by the RVA. Dispute resolution is difficult and time consuming preventing residents from making complaints.

Legal advice and support is problematic to obtain due to a lack of affordable expertise, and the domination of industry-favoured law firms causing many firms to be unable to act due to conflicts of interest.

ILUs under the RVA make up approximately 60% of the retirement village sector, containing approximately 30% of the total number of units.

Both models contain ageing stock that is often inappropriately designed for people as they age, with managers who often have a lack of knowledge of relevant legislation and the needs of older people.

Unfortunately ILUs have “not been linked to any public policy goals” since the 1980’s (Jones et al., 2010, p27) and there has been no significant study of this housing type since approximately 2004.

Recommendation:

It is recommended that a thorough market study/investigation be undertaken to better understand this sector. The investigation would consider the current state of the stock, the numbers of villages and units and a current profile of the needs and experiences of the resident population to identify priority areas for reform.

Rental villages

Current situation:

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

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

Units are semi-self contained, usually in clusters of 40-100, without a stove, large fridge or laundry facilities due to a portion of rent paying for the provision of meals and a linen service.

Utility and phone charges are paid for separately by the tenants.
These villages most resemble a rooming house legally, due to the lack of cooking facilities in units and the common dining room on-site.

It was estimated there were roughly 3000 residents in rental villages across Australia approximately 5 years ago. We estimate the current total number of residents would be about the same. Most rental villages in Victoria are located in regional areas and populated by a majority of people who are 80 years of age and over.

Key considerations:

The provision of services such as meals, are not regulated under the RTA or any other specific legislation and therefore the quality and quantity of food has always been a concern for residents.

Consumer law may provide protection in regard to the provision of goods and services but such general legislation is unlikely to be used by such vulnerable residents. In HAAG's experience no residents have been willing to challenge a village on this basis.

In fact most rental village residents are unwilling to challenge a village on any basis, even if their rights are straight forward and clear.

Variations of this model have now emerged where legislative coverage is even less clear.
For example residents can now be owner occupiers and access a variety of services, such as packages of care, for an associated cost. Care packages appear to be unregulated and unlegislated, and the provision of housing in this scenario no longer fits the tenancy model and seems to lie outside of legislative boundaries.

Currently Ms Gayle Tierney MLC, Member for Western Victoria, is investigating this housing type in more depth due to residents' complaints from a village in her electorate. The concerns outlined above reflect broader gaps in legislative protection for vulnerable older Victorians.

Recommendation:

It is recommended that a market study/investigation be undertaken in this area to ensure that rental villages are properly legislated and regulated. Services in particular need to be regulated to ensure high standards are adhered to with managers being obligated to provide a duty of care to residents.

Caravan and residential parks and villages

Current situation:

Caravan parks have traditionally provided affordable, holiday accommodation often also allowing for permanent residency in low numbers.

Over time the industry has evolved to provide larger numbers of sites allocated for permanent residents, and in turn moveable dwellings have also evolved to reflect the interest in this type of affordable housing especially for retirees.

Purpose built villages consisting of residents who own their moveable dwellings but lease/rent the site on which it stands are called residential villages and are owned by private companies. These villages have experienced significant growth in recent years.

Currently parks are covered by the RTA under either Part 4 for more traditional, older dwellings or Part 4A for purpose built villages in more modern moveable dwellings.

Residential villages contain anywhere from 20 to 400 sites and are scattered across Victoria. Units cost from $100,000 to $500,000, depending on location and services provided on-site. Communal facilities are always included but at varying levels depending on the operator and the size of the village.

As well as the purchase price of the unit ongoing fees are paid during the term of occupation. Some operators are now also charging exit fees.

Key considerations:

The RTA does not provide adequate security of tenure for residents, which means operators are free to decide the level of security they will provide. Although now provided by some of the larger operators in Victoria, security of tenure is still generally scarce with a lack of consistency across the sector.

Exit fees, such as Deferred Management Fees (**DMFs**), and other village features such as communal living, are not addressed by the RTA either.

Residential villages are targeted at people over 55 years of age as an affordable retirement housing option. Unfortunately planning and building requirements do not properly consider the target population, and fee levels do not always reflect a pensioners' income affordability.

The biggest issue presented by residents relates to management attitudes and the lack of professionalism that exists in this field. There is currently no standard set for managers, and no training required for people to undertake these leading roles.

The industry in Victoria is still fairly small in comparison to other States but is steadily growing without proper legislative and regulatory protections for residents.
In line with the growth of the industry, and the need for more affordable, retirement housing options residential villages could be a very viable type of housing for older Victorians, provided legislation and regulation develops in response to changes in the sector.

Recommendation:

It is recommended that a thorough market study/investigation be undertaken to better understand this sector. The aim would be to review the related legislative and regulatory requirements and potentially move towards stand-alone legislation that protects residents appropriately.

Semi supported retirement housing options

Current situation:

The retirement housing industry is expanding and hybrid housing types are steadily emerging in an attempt to meet the demands of Victoria's ageing population.

A number of service integrated housing types exist where older people live independently with basic supports provided in conjunction with their housing.

Rental villages provide one example but alongside them also exist:

- serviced apartments,
- Supported Residential Services (**SRS**),
- rooming houses plus, and
- other less well known models.

All of these provide housing with the inclusion of services that contain a certain level of care, such as monitoring medication intake without directly giving it out, but not the kind covered by Commonwealth legislation governing aged care.

Key considerations:

With the increasingly popular combination of housing provision and care services concerns have emerged related to a lack of legislative coverage.

It appears that some housing types mentioned above fall outside of any legislation that imposes duty of care requirements, regulated service provision and adequate staff skills to protect vulnerable residents.

Generally people accessing service integrated housing are elderly, and by nature are more vulnerable which results in the need for supports linked to their housing. The lack of clarity around legal jurisdiction is not often noticed until well after the residence is established.

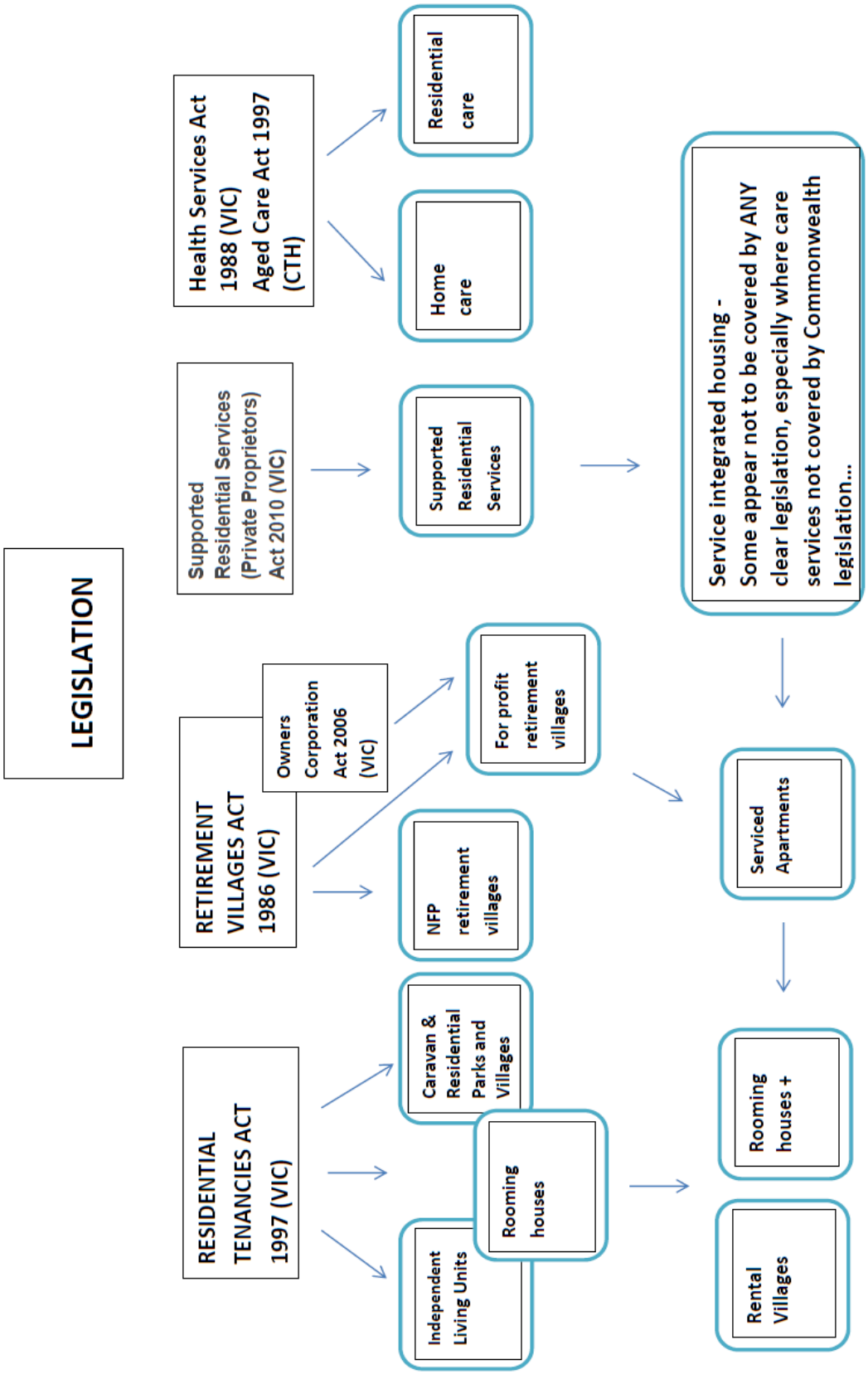
This portion of the retirement housing sector, although generally overlooked, must be considered in the overall policy picture to appreciate the true complexities that exist with retirement housing.

Recommendation:

It is recommended that a thorough market study/investigation be undertaken of this sector to ensure a well-balanced approach is taken in the development of policy and regulation relating to the spectrum of retirement housing.

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LEGISLATION
Health Services Act 1988 (VIC) Aged Care Act 1997 (CTH)
Residential care
Home care
Supported Residential Services (Private Proprietors) Act 2010 (VIC)
Supported Residential Services
Service integrated housing - Some appear not to be covered by ANY clear legislation, especially where care services not covered by Commonwealth legislation...
RETIREMENT VILLAGES ACT 1986 (VIC)
Owners Corporation Act 2006 (VIC)
For profit retirement villages
NFP retirement villages
Serviced Apartments
RESIDENTIAL TENANCIES ACT 1997 (VIC)
Caravan & Residential Parks and Villages
Rooming houses
Independent Living Units
Rooming houses +
Rental Villages