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19 September 2016

Residential Tenancies Act Review
Consumer Affairs Victoria
yoursay@fairersaferhousing.vic.gov.au

Dear Sir/Madam

**Residential Tenancies Act (RTA) Review Issues Paper: Alternate forms of tenure:
parks, rooming houses and other shared living rental arrangements
Submission from Mornington Peninsula Shire**

Thank you for the opportunity to respond to the above issues paper. This submission is made on behalf of the Mornington Peninsula Shire Council, but due to time constraints, has not been the subject of a report to an Ordinary meeting of Council.

The Issues Paper is commended for its comprehensive analysis in identifying relevant issues. It is noted however that the surveys that have been undertaken in association with the review show a relatively positive degree of satisfaction from tenants. Such satisfaction should not be taken to outweigh the seriousness of specific problems that will emerge from the stakeholder consultations.

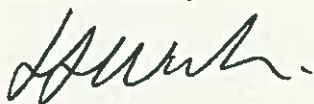
In this regard, your attention is particularly drawn to the case studies and comments presented in the Housing for the Aged Action Group's submission in response to the Issues Paper.

Generally speaking, further investigation and reform to address identified problems is supported. The attached comments provide further detail in response to the key issues identified in the issues paper summary.

Given the Local Government 2016 Election Caretaker obligations, could you please ensure that this submission is not printed, published or distributed during the caretaker period: 21 September 2016 until 6pm on 22 October 2016 unless it is first returned for certification by the Council's Chief Executive Officer.

If you have any questions, please contact Roz Franklin, Senior Social Planner Housing Justice and Advocacy of this office on 5950 1099 or email: rosalyn.franklin@mornpen.vic.gov.au.

Yours sincerely



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Alternate forms of tenure: parks, rooming houses and other shared living rental arrangements
Submission from Mornington Peninsula Shire – attachment

Issue

In what situations should a person living in a caravan park be covered by the RTA?

The housing market, level of housing stress and the health of the tourist accommodation market currently affect how sites are used from time to time. The experience on the Mornington Peninsula has been that sites originally established for tourist purposes have been increasingly turning over to residential use, some as holiday homes or for part-time living and others for permanent residential lifestyles. If Planning and Environment Act approvals (i.e. planning permits) are granted on the strategic justification that a caravan park is required for tourism purposes but the Residential Tenancy Act provisions work counter to implementing this intention by enabling permanent stay it can lead to people permanently residing in “unplanned urban growth areas” that are outside the Planning Scheme’s Urban Growth Boundary (UGB) and poorly serviced with public transport and other normally expected urban services. The Victoria Planning Provisions’ definitions of “Residential Village” and “Camping and Caravan Park” are not easily differentiated in a tourist region like the Mornington Peninsula especially when the caravan park definition is not confined to tourist only use but is still permissible outside the UGB.

Defining when a person living in a caravan park should be covered by the RTA is a difficult issue to resolve when there is no clear physical or lawful differentiation of a site in a caravan park that is intended for short term tourist purposes from one that is appropriate and intended for other residential purposes. The success of the South Australian model in doing this could be investigated further for any lessons that could be applied to the Victorian system.

It is noted that in relation to question 1, “annuals” stays are more akin to holiday or part-time house use than short term tourist stays of less than 60 days.

It is considered that any sites intended for residential use under the Planning and Environment Act as indicated by a General Residential Zone or a Low Density Residential Zone should, like any other residential property, be subject to comprehensive coverage under the Residential Tenancies Act (i.e. not be subject to the 60 day provision). If located outside the UGB or one of these zones (e.g. a Public Use Zone or Green Wedge Zone) then a different application of the Residential Tenancies Act may be justified on tourism grounds and to achieve the underlying intent of planning schemes for a well-planned settlement pattern.

Ideally before a person buys or rents a site in a caravan park outside the UGB they should be advised whether it can be lawfully used for permanent residential use and what planning permit conditions, including any agreements under Section 173 of the Planning and Environment Act apply. This is not the case at present.

In conclusion, reform of the RTA alone is neither likely to properly address the tenure related problems of people living in caravan parks and residential villages nor work with the Victorian Planning System to achieve properly planned settlements. There needs to be comprehensive regulatory reform with coordinated definitions and provisions between the Victoria Planning Provisions and Planning Schemes under the Planning and Environment Act 1987, the Residential Tenancy Act, Building Act, Public Health and Wellbeing Act 2008, and Section 32 of the Sale of Land Act.

Issues arising from the condition and sale of dwellings in caravan parks and residential parks

It should be possible to develop some guidance about these matters in the Act with disputes made possible to VCAT. As a matter of equity with other properties, coverage by the Building Act would bring a standardised approach to demolition.

What happens when a caravan park or residential park is sold or closes down

It is likely that such closures will affect low income persons who could have difficulty both asserting their rights and also finding alternative affordable housing and related services. It is therefore recommended that provisions be reviewed with a view to better supporting residents (e.g. reasonable notice periods, pre-contract disclosures).

Community living issues in parks and rooming houses

Opportunities for the Tenancy Act review to provide improved conditions would include:

- clear disclosure provisions;
- requiring the provision of individual letterboxes to ensure appropriate privacy for residents;
- standardising provisions relating to rights for accessibility modifications;
- standardising key access rights for residents including accessibility for emergency services; and,
- better aligning utility provisions to best practice utility use and charging systems to enable residents commensurate access to concessions and payment plans to those enjoyed by property owners.

Questions 29 to 31 – It is acknowledged that closer proximity in living quarters may be a factor in disharmony however first recourse should not be eviction. Model park rules may be useful in providing procedures to address conflict but ultimately other processes that apply in the general community are also available in these situations.

Question 35 – Lack of CFA support and resourcing is a significant issue. Further training for Council Environmental Health Officers in fire safety management for parks is needed. It is also costly for parks to fully meet the fire safety requirements

Types of agreement that rooming house residents and operators can enter into.

Question 41 and 42 - It is agreed that a rooming house operator ought to obtain the consent of the property owner for the establishment of a rooming house.

Question 23 – Park owner responsibilities should align with those in the Public Health and Wellbeing Regulations. The park owner is the proprietor. Model maintenance agreements should be established for all parks.

New and emerging models of rooming houses and rental housing, and how these should be regulated.

The barriers to providing affordable housing, particularly in established urban areas, together with high demand are likely to see new and emerging models with developers having interstate interests and residents seeking better lifestyles in different places of abode.

It would be preferable if tenancy regulation could be reviewed with the aim of working towards a standardised model across Australia. A first step may be the increasing standardisation of provisions between alternate forms of tenure in Victoria – for example the establishment and operation of residents' committees across caravan parks and residential parks.

Processes for any improved tenant rights should not be so onerous as to incur expenses for landlords that would significantly deter the provision of additional housing and nor so onerous for tenants that they would be deterred from exercising them.

There should not be an exemption from the Building Act for mobile homes that are used for permanent accommodation. Standards for disabled access and energy efficiency, particularly justify equitable treatment. It is considered that such standards may have minimal additional costs and better integrate with fairer tenancy provisions.

Reform is needed to require much greater disclosure prior to the time of sale of both individual leaseholds and the sale of caravan parks/residential parks/villages. The New South Wales system is a good example but could be further improved. Disclosure should include, in a plain English format:

- All rent, charges and levies.
- Service obligations
- Conditions pertaining to any removal of housing.
- Utility costs
- A copy of any planning permit pertaining to the caravan park/residential park/village.
- Park rules

Managers of caravan parks/residential villages should face a fit and proper person test, or possibly a licencing or accreditation system that is operated by the State Government. Any accreditation system should cover both asset and people management.

A model set of Park rules should be developed with variation possible through special resolution of Tenants' Committees.

Residents' Committees should be able to contribute to decisions about charges and levies including having the ability to reject a new charge or levy.

If the legislative framework is not significantly improved to avoid management and inequitable financial costs, then a Retirement Housing Ombudsman would be supported.