Victorian Caravan Parks Association

Response to the Rights and Responsibilities of Landlords and Tenants Issues Paper

2 May 2016

Response of the Victorian Caravan Parks Association (VicParks) to the Rights and Responsibilities of Landlords and Tenants Issues Paper 3 released as part of the Review of the *Residential Tenancies Act 1997* ("RTA").

The Victorian Caravan Parks Association appreciates the opportunity to comment on this paper.

Fairer Safer Housing Review – general comments

The Victorian Caravan Parks Association Inc. (VicParks) is the peak industry body for owners, managers and lessees of caravan parks in Victoria. Its members are predominantly regionally based, and the industry forms an important component in the supply of both regional tourist and regional residential accommodation.

Current data held by VicParks indicates that more than 80% of its 380 park members provide accommodation to residents who regard the park as their permanent residential accommodation and their home. Some of these parks are fully residential; the majority are best describes as hybrid parks that offer accommodation to both tourists and residents.

VicParks members are therefore major providers of accommodation in both regional and to a lesser extent, outer metropolitan locations. In many regional locations the supply of rental accommodation is very limited, and caravan park owners are frequently approached by both government agencies and private agencies seeking accommodation for clients who for a variety of reasons that can include ongoing homelessness, continuing unemployment, release from jail, domestic disputes, and general isolation from the general community, have been unable to find affordable accommodation.

This tenancy mix can produce a level of volatility in the park residency group that requires skilful management in order to provide a safe and welcoming community for all park residents and tourists.

Caravan parks provide an important option in the market for affordable, flexible housing. Caravan park operators are typically professional business owners seeking long term, sustainable profitability and are less focussed on short term, speculative capital growth. The industry has concern that ongoing changes to the legislation governing the caravan park industry over the past 30 years have created an increasing administrative burden and as well as uncertainty for park operators and residents alike. The risk of introduction of increasingly restrictive legislation around screening of incoming residents and provisions for exiting unsuitable residents from the park could potentially reduce the supply of affordable housing in caravan parks and further disadvantage already vulnerable residents.

Issues Paper 3 does not provide evidence that caravan parks are failing to provide safe, secure and affordable housing for residents, nor is there evidence of unfair management practices or that park owners and managers are failing to effectively meet their responsibilities in relation to the screening and acceptance of applications for a residency. VicParks submits that the need for legislative change for the caravan park sector in this context is not supported by specific examples or quantitative evidence of complaints, applications to or decisions by VCAT arising from this accommodation sector.

Some of the questions posed in Issues Paper 3 simply do not apply to this sector – for example Questions 4,5,7,9 and 10 refer to the use of an agent in the pre-tenancy procedures; agents are rarely used in the resident selection process in caravan parks.

Other questions do not appear to take into account the impact and safety net for residents that are provided by the documentation required to be completed by both park owners and their prospective residents prior to commencing a Part4 A residency. The introduction in 2010 of a requirement for full disclosure by the park owner to applicants before commencing a Part 4A residency has meant that all issues of costs, responsibilities of both landlord and resident, park rules, etc, are clearly disclosed to prospective site tenants and they have more than adequate time to consider professional advice regarding the sale and site agreements before choosing whether to complete the purchase and reside in a caravan park.

There has been no evidence produced to suggest that either fully residential parks or hybrid parks operate other than under fair management practices that are balanced and fair to both park owners and residents, and that provide safe, secure and affordable housing for residents.

Response to Issues Raised in the Paper

Before a tenancy

1. *Under what circumstances do tenants encounter unfair treatment or unlawful discrimination?*

We do not consider that persons seeking a tenancy in a caravan park encounter deliberate unfair treatment or unlawful discrimination.

In general, there is not a sufficient level of competition for residential sites and dwellings in caravan parks to engender competitive analysis by the park owner between applicants. Generally the application is considered along the lines as described in (4) below.

2. *What are the obstacles to tenants challenging discriminatory treatment and seeking remedies, and what are the solutions to these obstacles?*

The existing law (Equal Opportunity Act 2010) provides adequate opportunity for tenants to challenge discriminatory treatment. There is no need to "re-invent the wheel" by reproducing the provisions of EOA in the Act.

It is also worth noting that bonds or other forms of refundable cash or property deposit are not generally required of persons seeking residential accommodation in caravan parks.

3. *How should tenants and landlords be informed about their rights and obligations in relation to discrimination, for example under the Equal Opportunity Act 2010?*

A notation could be included in the standard application form contemplated by question 6.4.

4. *What types of information is used by landlords and agents to assess the suitability of rental applicants?*

Persons seeking a tenancy in a caravan park are generally assessed by the park manager or owner according to their potential to fit into the community of residents already in the park, or in the case of a mixed-use park, with tourists and other customers of the park. Since the sites can be compact within the park, it is important that prospective new residents can demonstrate a willingness to live in harmony within the existing park community.

Prospective residents also must be able to live independently within the park and to manage daily tasks of independent living such as shopping, cooking, and maintaining a basic level of personal hygiene. Park owners report that this last requirement is very important in ensuring that the park remains clean and safe for other residents.

Tenancy data bases as referred to in this Paper are not generally used in the process of reviewing applications for residency in caravan parks.

5. When landlords and agents are provided with information about prospective tenants, what measures can be taken to ensure it is used appropriately?

Real estate agents are not involved in the process of reviewing applications for residency in caravan parks.

6. What is your view on the stakeholder proposal to prescribe a standard application form, and what information requests should be required to be included in such a form?

In principle, we would not oppose a standard application form for residency in a caravan park. Such a form should include details of next of kin, persons to be contacted in an emergency, and some indication of capacity to meet the rental payments.

However a standard application form should not prevent any caravan park business owner from requesting and requiring further information to ensure that the applicant will be a compatible inclusion into the existing community of residents, that there is a demonstrated capacity to meet the rental payments and that there is no existing history of behavioural patterns that may place other park residents at risk.

7. What are the benefits and risks of landlords and agents requiring a security deposit from prospective tenants to obtain a key to view premises?

There is no evidence that this practice has created any issues in caravan parks. In fact it is not a practice adopted in the caravan park industry.

8. What other issues arise from the operation of tenancy databases, and how do these impact on prospective tenants?

Tenancy databases are not generally used or accessed within the caravan park industry. There is no evidence of improper use by caravan park owners of databases or the information in them.

10. What is your view on the stakeholder proposal to establish a database that tenants can use to assess the reputation or reliability of a prospective landlord or agent?

VCPA members have nothing to fear from the establishment of such a database provided that the controls on the establishment of it, access to it and use of information from it mirror the controls currently specified in Part 10A of the Act in respect of tenancy databases.

11. What additional information should a landlord be required to give a tenant at the start of a tenancy, if any?

Part 4A of the Act is already quite prescriptive in this regard in that it specifies the information that is required to be given to a prospective site tenant before entering into a site agreement.

The general practice adopted by the vast majority of caravan park owners is to provide significant material to prospective residents and site tenants including the park rules and details of the rent and other charges that will be payable.

There is no evidence of ill-informed residents or site tenants entering into agreements to reside in caravan parks.

12. In what circumstances would the stakeholder proposal of a consideration period be appropriate for a tenancy agreement, and what would be a suitable duration?

Existing standard Privacy and Anti-Discrimination policies currently provide for the protection of prospective and current caravan park residents.

As is pointed out in the Issues Paper, Part 4A of the Act specifies a 20 day consideration period for site tenants.

VicParks would have no objection in principle to a consideration period of 3 business days applying to prospective Part 4 residents provided that it is linked with a further amendment to the definition of ***resident*** in the Act by deleting sub-paragraph (ii) of paragraph (b). This would mean that both the park owner and the prospective resident would need to form an intention and agree that a residency right be created thereby avoiding the occurrence of the "accidental resident".

VicParks notes, however, that the imposition of a consideration period would likely have a significant impact on the availability of emergency housing within caravan parks. This could have a social impact particularly in remoter areas.

13. What requirements and approaches, including communication channels and support, should govern the form and service of documents for tenants, landlords and agents?

Service of documents is a vexed question for many park owners and managers. Since the service process has often been initiated by an incident that in the opinion of the park owner requires that the residency be terminated for the safety of other park occupants and their quiet enjoyment of their dwelling, there is the possibility of risk of retaliatory harm to the park employee who delivers the notice.

Frequently however, the resident has left the park and is unable to be located for the services of such notices, creating uncertainty and difficulty for the park owner. The current system of requiring the park owner to lodge a Request for Possession at VCAT is slow and creates financial hardship for the park owner and fear and uncertainty for adjacent park residents who may have been involved in the incident that triggered the ensuing process.

We are advised by VicParks members that many of their residents fear reporting the anti-social and threatening behaviour of another resident to the park managers because of the fear of retribution from that resident. In park communities where dwellings are in close proximity, and the sound-proofing of the dwellings is much less efficient than that used in the building and construction of apartments and houses, issues of noise, intimidation and anti-social behaviour will be more frequent than in other sectors.

The requirement that documents be served by registered post is problematic in caravan parks. Typically, mail addressed to residents is delivered to the park office the result being that registered mail posted by the park owner to the resident is delivered back to the park owner. If the resident or site tenant refuses to collect it from the office the question of service is vague and uncertain. Whilst VCAT has determined that all a landlord need do is place the notice in the registered post system to effect good service, the situation where the registered post is effectively delivered to the park owner is unsatisfactory.

Very often, the park owner is left with no alternative but to serve a notice personally which, for the reasons outlined above, can be difficult.

VicParks applauds and supports the proposed amendment to the Act to allow the service of documents, including notices to vacate, by email.

During a tenancy

14. How should the current statutory duties for both landlords and tenants be reformed to meet their contemporary needs?

VicParks submits that the range of duties currently specified in Parts 4 and 4A of the Act adequately meet the contemporary needs of park owners, residents and site tenants and that there is no evidence otherwise.

15. What are your views as to whether the length of time currently allowed for remedying the various breaches outlined in the Act is appropriate? If the length of time is not appropriate, what other time should be specified?

VicParks submits that the length of time currently allowed in Parts 4 and 4A of the Act for remedying various breaches is appropriate and that there is no evidence otherwise.The nature of residential living in caravan parks, as previously noted, is that they comprise dwellings that are not generally sound-proofed, are sited in close proximity, and frequently attract residents with specific behavioural and health issues that may hinder their easy assimilation into the residential community within the caravan park.

When issues arise, the process of issuing 3 Breach notices to enforce compliance with park rules on noise, speed of driving in the park, use of common facilities, etc or of breaches to the specific tenancy agreement – eg number of visitors to the site, etc, is lengthy and fraught with difficulty. The time that must elapse between issuing of each Breach notice can escalate the conflict to a situation that becomes difficult to manage for all concerned. The resultant application to VCAT for redress adds a further delay to any resolution of the issues.

At this point it is important to note that park owners are frequently reluctant to approach VCAT for a resolution of their problem with a resident. While the Review Panel has noted that residents can find the process of seeking redress from VCAT to be expensive, daunting and time-consuming, caravan park owners would have a similar view. Most caravan parks in Victoria are situated beyond metropolitan Melbourne or a regional court location; the cost of attending VCAT. Twin factors of the required time away from their business to attend the hearing, and a real concern that they do not

have the skills to effectively prosecute their case serve to deter park owners from using VACT to resolve the matter.

16. *Where a breach notice is issued, should the person who received it have the option of remedying the breach or paying compensation in order to comply with the notice, or should compensation only be permitted where the breach cannot be remedied?*

Where a Breach notice has been issued, we advocate that the park owner should have the option to withdraw the notice if payment has been made to compensate in order to comply with the notice. In some cases, the issue of a breach notice itself can be a trigger to the resident to get matters back on track. However it is not unusual for a resident to play a form of "cat and mouse", in which the matter (usually a situation of rent in arrears) is brought up to date, only to recur and recur. Chasing up these matters is time-consuming for the park owner and inevitably causes further conflict.

On the other hand, given the community nature of caravan parks, very often the rectification of the breach is required to ensure ongoing harmony within the park. In that sense a resident or site tenant should not have the option of paying compensation and continuing the behaviour or activity that constitutes the breach.

17. *What, if any, measures should be available for tenants and landlords to address a breach of duty before seeking redress at VCAT?*

The "3 strikes policy" adopted by the Act gives ample opportunity for park owners, residents and site tenants to address breaches of most duties. Part 4A site tenants have the additional protection of being able to form a site tenant's committee.

18. *Should the Act require initial compliance orders for a breach of duty to be limited in duration, and if so what limitation is appropriate?*

VicParks agrees that there is some uncertainty about the proximity which breaches must bear to each other before a notice to vacate may validly be issued on a third breach. VicParks would welcome the opportunity of discussing reforms which would bring certainty to this issue including the introduction of an expiry date and the "re-setting" of the "3 strikes policy".

19. *What are the advantages and disadvantages of the current prescribed tenancy agreement, compared with a more comprehensive agreement?*

VicParks has produced its own Part 4A Agreement, to assist our members to comply with the statutory requirements of the provisions of the Part4A clauses in the RTA. At the time of its development in 2010, this Agreement was recognised as a model by CAV staff, who asked us for permission to advocate the use of a similar agreement to non-VicParks members.

VicParks has also produced a model Part 4 Agreement for use by its members, to also provide both residents and park owners with a clear definition of the rights and responsibilities of both parties. Whilst this is not a legal requirement, and goes beyond the requirements of the prescribed statutory provisions, many parks have adopted this document to provide certainty once again to both parties.

VicParks is committed to encouraging its members to adopt best practice by utilising these agreements.

VicParks would not be in support of having a standard agreement enshrined in the legislation. We believe that this would significantly reduce business flexibility as each park owner may offer different terms and conditions on certain terms, to meet local needs..

Part 4A is already quite prescriptive as to what the agreement should include and in our offers sufficient consumer protections.

21. What is the right balance between the interests of tenants and landlords in respect of pets in rented premises? What reforms, if any, are required to current arrangements?

We hold that each park owner should have the right to determine a park policy on pets in their parks.

As noted, caravan parks offer close living arrangements without some of the safeguards of noise-limiting construction standards to protect resident from the noise from each other's dwellings. As well, the provision for fencing off pets from intruding into adjacent sites is limited. This can give rise to a pet living beside a site occupied by another resident with pet allergies, fear of dogs, etc.

And since mixed-use parks will also have tourist occupants living in proximity with residents, this can cause further conflict where young children occupy sites and may be unused to dealing with pets.

We have experienced issues of alleged discrimination when the park owner allows some pets - eg fish, and not others – eg dogs. It is a minefield that is best left to the individual park policy on pets; of course this policy should be made very clear to all potential applicants for residency (and tourism) sites.

The issue is adequately dealt with by Parts 4 and 4A which –

(a) allow park owners the right to make park rules relating to the keeping of pets; and
(b) afford residents and site tenants the right to make application to VCAT if they think that a park rule is unreasonable.

22 What entry to premises arrangements strike the right balance between the rights of tenants to quiet enjoyment and the rights of landlords to enter premises and what, if any, reforms are required?

Parts 4 and 4A of the Act strike a reasonable balance between the respective rights of the park owner, residents and site tenants on this issue, particularly having regard to the type of accommodation typically offered in caravan parks. There is no evidence that there a widespread, or indeed any, problems arising in respect to it.

23 What other issues and factors arise from current arrangements for entering a property that is to be re-let or sold and what, if any, reforms are required?

This is not an issue in caravan parks

24 Does the Act require amendment to accommodate the growth of short term accommodation platforms? If so, what amendments should be considered?

VicParks submits that urgent reform is required in this area given a recent VCAT decision to the effect that renting a room out through Air bnb does not constitute sub-letting – see Swan v Uecker (Residential Tenancies) [2016] VCAT 483 (24 March 2016).

Sub-letting must not be considered a right of the resident. Nor should it be considered that a resident or site tenant has the right to allow third parties to occupy the dwelling or site. In the context of park residents constituting a small community of residents living in close proximity to each other, it is critical that the park owner remain in control of who takes up residency in his/her park. In making decisions about residency applications, the park owner has concern for the existing tenancy mix, the geographic layout of the park and the site of the proposed new resident, as well as considerations of the tourist accommodation within the park.

Use of the site by the resident for short-term accommodation purposes, whether for family and friends, or particularly as a form of Airbnb accommodation, renders the park owner to lose control of the tenancy and tourism mix of the park.

This can give rise to issues of personal safety of park staff who are called by other park residents to manage late night incidents involving people that they have not personally screened and met. This is not safe and not acceptable.

Sub-letting has also led to issues of rental arrears where the sub-tenant has paid fees to the main tenant, who has not then remitted them to the park owner. Recovery in these circumstances can be costly and protracted.

25. What other reforms, if any, are required to balance the interests of landlords and tenants in respect of sub-letting and lease assignments?

Vic Parks submits that Parts 4 and 4A adequately balance the interests of park owners, residents and site tenants so far as lease assignments are concerned.

26. What issues arise in practice for residents and on-site managers in relation to the use of notices to leave because of violence in managed premises, and should any amendments to current arrangements be considered?

In practice, notices to leave are difficult to execute when violent situations are already underway, particularly where drugs and alcohol are involved, as they are increasingly. In small country towns, police back-up is not available or ineffective where the police are uncertain as to the boundaries of their duty in relation to this provision.

Often the park manager is reduced to an unsatisfactory compromise to gain peace and quiet for surrounding residents for the remainder of the evening and night, then must issue a notice to leave the next day. This is never an easy process, and can then lead to applications to VCAT to assist in the next process of reclaiming the site. Again, these processes are lengthy, leaving an unsatisfactory and potentially explosive situation in the park until it is resolved.

At the end of a tenancy

27. What are your views on the stakeholder proposal that tenants should be able to serve a reduced notice of intention to vacate if they are offered social housing by a community housing provider?

Occupants of caravan parks who fall into this category will most likely be residents pursuant to Part 4 of the Act. Under section 296 of the Act they have the right to terminate on 7 days notice. This is not an issue for caravan parks.

28. For what reasons should a landlord be permitted to end a tenancy, and what notice periods should a tenant be given?

VicParks believes that the existing provisions of the legislation offer an appropriate balance of safeguards for both landlord and resident.

The current provisions allow for immediate end to a tenancy where the resident's behaviour has endangered the safety of others, or is causing a loss of quiet amenity to others.

In the case of less immediate but negative behaviour, the notices to leave provisions apply, providing the resident with 2 clear warnings. Failing to amend the offending behaviour then results in a notice to leave. That seems fair and reasonable, and in the experience of many VicParks members, can lead to a mediated or negotiated settlement of the issue so as to avoid eviction of the resident. Park owners will frequently comment that they don't want to evict the resident, but that this will be the last resort if the offending behaviour does not cease.

Park owners may use the provisions of the Part 4 legislation to require a resident to vacate on 120 days' notice without a reason. A Part 4 Resident rents the site on which they live in either in their own van or in a dwelling belonging to the park owner. As such they have a sufficient degree of portability to locate alternative premises within this 4-month time frame, notwithstanding that their value as a future resident with another landlord may be diminished by consistent rental arrears, or a demonstrated lack of ability to live harmoniously with other residents in the park.

The following case study provides an example of the need for retention of the right to issue a Notice to Vacate on 120 days notice without specifying a reason –

(a) a site tenant lived in a park in his own cabin;
(b) with the consent of the park owner, he invited a female friend who had nowhere else to live to stay in the spare room of his cabin;
(c) she lived in the cabin as her sole or main residence for several months;
(d) the owner of the cabin died,
(e) the female friend remained in the cabin claiming a residency right as she had lived in the park as her sole or main residence for more than 60 days;
(f) she resisted all requests from the park owner and the legal personal representatives of the deceased to vacate the cabin;
(g) as she was not otherwise committing any breach the only basis on which she could be removed from the park was the issue of a notice to vacate under section 314 of the Act.

Park owners must offer Part4 A site tenants who own their own cabin and rent the site on which it stands 365 days notice to vacate without a reason. This provides the site tenant with a reasonable period of time once again to seek alternate accommodation.

Again we make the point that some residents who present at the initial screening interview as being suitable for selection into the park community can for a variety of reasons fail to settle in. The park owner has a duty to the community of residents to be able to call up the notice to leave provisions where this is necessary to preserve the peace and harmony of the park, and the safety of all who call it home.

Caravan parks offer a safety net to some of the community's most needy and vulnerable people. They may not always be physically or mentally able to operate as independent occupants of the park. They will not always make a successful transition into a shared community life. They may not always understand the need to be considerate of the requirements of others. And park operators cannot always effectively predict who will and who won't make this transition effectively.

Tighter screening processes may in fact screen out some very needy people who are capable of settling well into park life.

Any reduction of the current notice to leave provisions could result in park owner deciding against offering residential park accommodation, effectively reducing the level of social housing provision in this state.

29. *For what reasons should a tenant be permitted to end a tenancy, and what notice periods should a landlord be given?*

Residents in caravan parks can and do end their tenancies on very short periods of notice, and generally at no financial penalty or cost

30. *What remedies or defences should be available to a tenant to prevent bad faith by a landlord who is attempting to end a tenancy?*

The current provisions of the Act provide adequate remedies. In particular –

- sections 315 and 317ZH provide that a notice to vacate given, respectively, to a resident or a site tenant is invalid if it is given as a retaliatory strike; and
- section 321A affords a resident or site tenant the right to challenge notices to vacate given for a range of reasons.

31. *What are the appropriate approaches to compensate a landlord where a tenant breaks a lease?*

This is not considered a significant issue in the caravan park industry.

32. *What, if any, additional protections should be provided to a tenant who breaks a lease or wishes to end a lease early due to circumstances such as financial hardship, family violence or illness?*

For the most part, caravan park owners are very sympathetic to these issues. There is no evidence that residents or site tenants in caravan parks are dealt with other than fairly.

33. What arrangements should apply to goods that a tenant leaves behind at the end of a tenancy?

Managing the issues of goods left behind constitute a procedural nightmare for park owners. Frequently this situation occurs when a resident leaves without formal notice ("does a runner") to the park owner, leaving behind a collection of low value goods and a big mess to clean up at some expense to the park owner. If a caravan or other dwelling has also been abandoned, the disposal process can become more complicated again. This process escalates further in complexity if the owner cannot be contacted to advise of the park owner's intention to dispose of the goods. Finally, the process of conducting a sale of goods by private auction is time-consuming and difficult for a park owner with little or no experience of the process.

We advocate a simpler process of a simple notification to the owner at the last known address of the intention to dispose of the goods. Failure to discover the current contact details of the ex-resident should not be a reason to make the process more complicated for the park owner, and there are other procedures within the Consumer Law framework for managing this process more simply.

Thank you for your consideration of these comments.

Yours sincerely

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