

Victorian Caravan Parks Association

Response to the Options Discussion Paper



8 February 2017

Response of the Victorian Caravan Parks Association (VicParks) to the Options Discussion Paper 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.

At the outset it is noted that the Options Discussion Paper does not include options relating specifically to the regulation of caravan parks and other types of alternate tenure, and that options for reform affecting these tenure types will be deferred until after the release of the report of the *Parliamentary Inquiry into the Retirement Housing Sector*. That report is expected by 1 March 2017.

Accordingly, the substantive response of VicParks will also be deferred until the Options Discussion Paper for the reform of caravan parks is released.

Nonetheless, VicParks considers it appropriate to comment on some of the options put forward in the recently released Options Discussion Paper insofar as they may relate to caravan parks.

Termination of residency or site agreement

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.

However, despite the best screening process, it is inevitable that some residents or site tenants will just not “fit” into the park community. Whilst they may not commit any substantive breach which would justify eviction, often the only way to preserve a pleasant, safe and secure environment for the benefit of the park community as a whole is for them to leave the park. It is for that reason that VicParks supports the retention of the ability of caravan park owners to give notice to vacate without specifying a reason - 120 days for Part 4 residents and 365 days for Part 4A site tenants.

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.

Insurance

Option 4.10 outlines a range of “blacklist” terms that the Act would prohibit from a prescribed tenancy agreement. That list includes a term obliging a tenant to take out any form of insurance in respect of the premises.

The Part 4A agreement developed by VicParks for use by its members requires site tenants to maintain at all times a policy of insurance by which their dwelling is insured. This is considered appropriate given that the dwelling is owned by the site tenant and is often located in close proximity to other sites and dwelling.

VicParks opposes any proposal to prohibit such a term from a Part 4A Agreement.

Pets

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

Caravan parks offer close living arrangements without some of the safeguards of noise-limiting construction standards to protect residents 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 in proximity to 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, site tenancy and tourism sites.

Sub-letting

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.

The need for this is well illustrated by the following example provided by a member –

*“A resident of one of our mixed use parks had their son move in with them late last year. We were not advised of this as the resident considered it their right to allow third parties to occupy the dwelling or site. At times this is not unusual within our parks, however we were extremely unsettled when we noted the nightly police presence at the site. We found out through this process, that the visitor was allowed by a court judge to live on our site as he re-settled back into the community from his prison sentence. This man was a **convicted paedophile** living in a holiday park alongside young families on holidays.”*

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.

Bonds and Rent

VicParks members report that the maximum bond level is often inadequate to cover unpaid rent. However, that is not to do with the quantum of the bond itself but, rather, with the process prescribed by the Act for dealing with people who are in arrears of rent. Typically, by the time that process is complete the arrears exceed the bond.

VicParks submits that an increase in the maximum allowable bond will not address the issue adequately as the stark reality is that most people in this market cannot afford a higher bond.

VicParks supports reform to streamline the process of dealing with those in arrears of rent.

As to the frequency of rent increases, VicParks notes that a number of its members increase rent twice per annum as allowed by RTA. VicParks submits that it is reasonable that park owners be permitted to do so given that, as distinct from landlords of rented premises, they do not have the benefit of negative gearing on their housing stock.

VicParks submits that there are adequate provisions in the RTA already to protect residents and site tenants from excessive rent increases.

Abandoned Goods

VicParks supports any simplification of the legislative process for dealing with abandoned goods. Option 6.6A in the Options Discussion Paper has attraction.

Property Conditions

VicParks supports clarification of the respective obligations of park owners, residents and site tenants by the introduction of ambulatory guidelines as contemplated by Option 8.8.

Part 4 of RTA does not include a provision equivalent to section 64 of RTA. This means that there is no legislative restriction on residents installing fixtures in, or making alterations to, the caravan or cabin that they rent. This is inappropriate particularly having regard to the standards imposed in respect of cabins by the *Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2010* (“Regulations”). The standards are prescriptive and the caravan park owner must comply with them. A situation where a resident may alter a cabin without obtaining the caravan park owner’s consent may result in a cabin becoming non-compliant without the park owner knowing.

VicParks submits that an equivalent to section 64 must be included in Part 4 of RTA and that, given the nature of the accommodation provided in caravan parks, no modifications should be allowed without the park owner’s consent.

As to modifications generally, VicParks supports the propositions, that there be no “as of right” modifications in caravan parks, that residents and site tenants must obtain the consent of the park owner before undertaking any modifications and that there be greater clarity around what is a reasonable refusal of consent. This position is particularly important given the obligations of caravan park owners to comply with stringent regulations particularly the requirement to maintain site separations.

it is important to note that caravan parks generally provide a relatively secure environment for residents in that each park comprises its own community managed by an on site manager as required

by RTA and, in most cases, access is regulated by boom gate. For that reason, VicParks opposes any proposal to require deadlocks to be fitted to caravans and cabins as contemplated by Option 8.11.

Dispute Resolution

VicParks supports the adoption of a process such as that contemplated at clause 10.3 of the Options Discussion Paper save that the process should not apply to unpaid rent.

Family Violence

Option 12.12 would seem to leave a landlord without recourse to the bond and therefore effectively liable for any damage caused to rented premises in the context of family violence where the perpetrator is not a co-tenant. VicParks submits that this outcome is inequitable and opposes the introduction of this option so far as it relates to caravan parks.

Thank you for your consideration of these comments.

Yours sincerely



Elizabeth White
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Victorian Caravan Parks Association