

I write this submission as the owner and operator of the Log Cabin Park in Langwarrin, a suburb of the City of Frankston. Our caravan park is comprised of 150 sites, of which 26 are Part 4A sites, or “owner-renters,” and the remaining 124 sites are Part 4 sites, i.e. those available to “renter-renters”. Part 4 sites contain furnished, heated and air conditioned cabins which are available for medium to long term rental to caravan park residents.

My father, Robert Brown, established the caravan park in the early 1980s. Robert has an extensive background in property development after graduating from University of Melbourne’s MBA program in the 1970s. Prior to joining my father in operating the business full time in 2008, I worked in Property Valuation and was employed in an executive position with the Victorian Caravan Parks Association.

As the caravan park industry has matured over the past 30 years, operators have become increasingly professional and informed in their management approach, largely through the information, education and support provided by industry associations including the Victorian Caravan Parks Association and the Real Estate Institute of Victoria. We regularly attend conferences with the Caravan Parks Association and three of our staff members have undertaken formal training with the Real Estate Institute of Victoria.

Our caravan park is situated in an Industrial zone, though the surrounding developments are a mixture of residential and commercial property. Our caravan park residents enjoy easy access to public transport, local schools, TAFEs, hospitals, public swimming pools, the freeway network and two major shopping centres. Across the road from the caravan park is the McClelland Gallery and Sculpture Park, an internationally significant art gallery established in the 1970s and developed by the late Dame Elisabeth Murdoch AC DBE. From a personal perspective, my family and I lived in the caravan park from 1985 until 1993 so I can endorse our caravan park and its location as comfortably liveable.

We consider that we are providing affordable, safe residential accommodation of a satisfactory standard to relatively high-risk residents. Frankston ranks as the 8th most disadvantaged municipality in metropolitan Melbourne according to the SEIFA Index (Socio-Economic Indexes for Area) 2011¹. In addition to issues of low income, high unemployment, low educational attainment as reflected in the SEIFA ranking, the City of Frankston has ongoing problems associated with alcohol and drug abuse as well as violent crime².

The “relatively high-risk residents” referred to above include those who have been unable to secure private rental properties due to insufficient rental history, uncertain employment status or who have been otherwise disadvantaged by or discriminated against in the mainstream private rental market.

We also house people who seek out accommodation in caravan parks specifically as a first preference due the flexibility of our rental terms. We do not require residents to commit to a fixed term lease and residents are required to give a minimum of only 7 days’ notice when they wish to vacate the caravan park. 38% of our current residents have lived in the park for less than one year. 64% of current residents have lived in the park for less than 2 years. Our median length of occupancy for current residents is 1 year and 3 months.

Owner-renters of our 26 Part 4A Sites have chosen to live in our caravan park for lifestyle reasons, their average length of occupancy is just under 12 years and they help to provide a community environment within the caravan park.

¹ http://www.parliament.vic.gov.au/images/stories/LRDCPC/Submissions/Submission_80_-_Frankston_City_Council.pdf

² <http://www.theage.com.au/victoria/frankston-has-one-of-the-highest-rates-of-hospital-admissions-for-alcohol-and-drug-abuse-in-victoria-20141118-11pcpd.html>

Some combination of owner-renters and renter-renters is very common in our industry³. The Victorian Caravan Parks Association data shows that the vast majority of caravan parks in Victoria maintain some combination of Site Tenants, other residents and holiday-makers both short- and long-term. Residential Parks are a relatively recent development and represent the market's response to a shortage of affordable, independent-living style housing for our ageing Baby Boomer generation.

In responding to the Issues Paper, *Rights and Responsibilities of Landlords and Tenants*, we have responded to those areas and questions raised that relate to issues of particular concern to our caravan park and its residents.

Screening Prospective Tenants and Residents

We are aware that indirect discrimination can exist wherever there is an imbalance in power between a majority, ruling class and a disempowered minority group. Unconscious bias is, due to its nature, difficult to confront and eradicate. However, it is our obligation as employers and responsible citizens to address this issue continually.

We are fortunate to have some 30 years of experience on which to base assessments of the risks individual residents present to the business and to one another. We have observed that the protected attributes as specified in the Equal Opportunity Act are in no way a valid indicator of risk. There is no supportable business case for breaching Equal Opportunity legislation. Rather than claim blindness to these issues, we have taken the deliberate step of becoming an inclusive accommodation provider. Our staff members have been trained in the sensitive provision of customer service to clients from diverse backgrounds, not only in terms of avoiding unlawful discrimination but also in terms of the value of diversity and the principle of inclusion.

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

The ability to assess the risk of each rental application is fundamental to the success of our business. We provide affordable, lower cost accommodation, a result of which is that our residents are higher risk. They are typically considered an unacceptable risk to real estate agents and private landlords. However, once our residents have established a history of consistent rental payments with us, they often find their rental applications are viewed as more reliable when they depart our business in favour of the private rental market. If further restrictions were to be placed on our ability to assess rental applications, this would represent a direct threat to the ongoing financial viability of our business model.

As providers of accommodation, our interest in prospective residents is exclusively related to their suitability for the accommodation offered, which involves an analysis of their financial situation and their previous rental history in the context of their ability to comply with the duties of a tenant or resident. Engaging in moral judgements about applicants' spending in licensed venues, or their spending in general, is not consistent with our business interests. However, bank statements are essential for corroborating pay slips and other sources of income.

³ Peter Corish, *Submission in response to Options paper: "Tenancy Policy Framework for Residential Parks"*, Victorian Caravan Parks Association, 2009, p3

It is an inherent characteristic of providing affordable accommodation that some residents do not enjoy secure, regular employment. Some prospective residents are under-employed, many receive unemployment benefits and some residents do have sufficient funds but are unable to secure regular private rental accommodation due to the unfounded prejudice of some landlords and agents (for example, residents whose families provide ongoing financial assistance but who do not wish to share their homes, and residents whose finances are administered by State or Public Trustees).

We cannot presume that all prospective residents understand the financial commitment they are undertaking and it is commonplace to encounter rental applications for properties where the rent exceeds the prospective resident's income. In such circumstances, we cannot be assured of rent beyond the initial payment, which may come from a Housing Agency. As such, we request further evidence of income or financial security, in the form of a bank statement, to substantiate the prospective resident's rental application, and not to assess their spending patterns or establish moral judgements of the prospective resident. We inform prospective residents that they may black out any payment transactions as we are concerned only with their income.

Case Example

In December 2015, a prospective resident attended the office, inspected a 2 bedroom cabin and submitted a rental application form for same. The prospective resident was a well-dressed and well-spoken man in his early 40s. The weekly rent was \$270 plus power as metered. The prospective resident had no income other than New Start (the unemployment benefit), and had been unemployed for several months. The resident stated he would be able to provide a Director of Housing bond and his first month's rent from a Housing Agency. The current New Start Allowance is \$489.70 per fortnight, which equates to \$244.85 per week. Were we to permit his occupancy of the cabin, we could only expect he would be in arrears at a rate of at least \$25 per week after his first month of occupancy.

With respect to Centrepay, I fail to see why a landlord would use this as a basis to reject a rental application. Our analysis of our client's payment history has informed our view that the use of Centrepay reduces the probability that a resident will fall behind in his/her/their rent, as Centrepay ensures that rent and other commitments are effectively prioritised, as they are automatically deducted from the resident's welfare payment.

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

There exists adequate Federal and State legislation to protect personal information held by private and public companies. Further, the Equal Opportunity and Human Rights Commission provides an accessible recourse to all Victorians who encounter unlawful discrimination, including discrimination in the provision of accommodation. We have observed no evidence to suggest that the misuse of information is a widespread problem in our sector.

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?

The Application Form is a critical device in the assessment and management of the residency risk. The issue of the safety of all residents must be held as paramount in the consideration of risk management in caravan parks and other forms of managed premises. Applications Forms that provide inadequate information on which to base an accurate assessment of risk will expose neighbouring residents to increased risks. These risks include violence and other anti-social behaviours, which will have a deleterious effect on the quality of the living environment for all residents.

A standardised form would remove our competitive advantage. The Application Form that we have developed internally is one of the key areas that differentiates our business from that of competitive offerings in that it enables us to maintain a safe and comfortable living environment for our residents. A standardised form and restrictions on the information we may lawfully request will expose our business and our residents to increased risk. This is of particular concern to those accommodation providers like ourselves who provide affordable accommodation to higher-risk residents. Landlords and agents who offer properties at the upper end of the market are unlikely to be as affected by this change, as are tenants of higher-end properties as tenants who can afford upper-market rents are statistically less likely to encounter issues related to drugs, violence and related criminal activity.

9. What measures do landlords, agents and database operators have in place to protect personal information about tenants and to ensure it is used appropriately?

As employers, we have in place a Privacy Policy to ensure employees adhere to the relevant legislative obligations. Our residents consent to the use of a Tenancy Database as a tool to screen prospective tenants so that the safety of the living environment in the Park can be maintained.

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?

This is an excellent suggestion, which can only improve the standard of professionalism in the industry. Google Reviews, Facebook and Trip Advisor are helpful tools for prospective caravan park occupants to review the quality of caravan park accommodation but there is no such equivalent in the broader rental sector. We would welcome the introduction of such a database as we are confident our business would benefit competitively from the increased exposure and accountability of any less professional operators.

Form of Documents and Manner of Service

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

Issues related to the service of documents have been of ongoing concern to us for many years, as the interpretations of the requirements under the Act have changed, and society's practices and use of technology have also changed.

Because we are a managed premises, historically it has been our practice to hand-deliver documents, both before and during a residency. Australia Post refuses to deliver mail directly to our resident's cabins so we accept the daily mail delivery in our central office, sort and store the mail for our residents to retrieve.

However, some years ago a VCAT member rejected our Application for Possession on the basis that there was no proof that the document was sent and the resident denied having received it by hand. The member recommended we deliver all documents during a residency by registered post. Were we to have accepted this advice from VCAT, we would be effectively signing to take delivery of documents that we have sent. There is no requirement in this process for the resident to have actually received the documents, despite the fact that it is the resident's receipt of documents that is the very purpose of the requirement in the Act. We have adopted the dual practice of sending documents by registered post (so that we can provide evidence of receipt to VCAT) as well as hand-delivering documents so that we can ensure they have been received.

The Keeping of Pets

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?

In achieving the right balance between the interests of tenants and landlords in respect of pets in rented premises, the Act must provide for the individual property characteristics to be taken into account.

Caravan parks are often situated in comparatively natural surrounds, with native trees, plants and wildlife in and around rental cabins. Typically caravan parks are located near to natural attractions such as rivers, beaches and other preserved areas of environmental significance. The Log Cabin Park is situated in close proximity to two wildlife reserves, the Langwarrin Flora and Fauna Reserve and the Pines Flora and Fauna Reserve.

Additionally, caravan park accommodation is seldom high-density though the acoustic properties of cabin walls is not of the same standard as a double brick house or concrete apartment block. Noise disturbances, including those associated with pets can have a significantly detrimental effect on a person's quality of life.

Caravan park residents are usually relatively short-term occupants (our average length of occupancy is 15 months) and with the unstable living arrangements experienced by many residents at the lower end of the property market, it is not unusual for pets to be left behind when residents vacate. Complicating this issue is the cost of having pets de-sexed, which is often a prohibitive cost for our residents who may be socio-economically disadvantaged.

Consequently, we have been forced to implement a caravan park rule prohibiting the keeping of pets. Despite the rule, some residents continue to bring cats into the park and the Council regularly attends to remove them from the property to protect the surrounding wildlife and prevent excessive noise disturbance to our residents.

Should the Act fail to take into account the individual characteristics of our park with respect to the appropriateness of pets, some residents would receive the benefits of keeping pets which they otherwise would not have had the opportunity to enjoy. However, this will come at the expense of the quiet and peaceful enjoyment of other residents, and the resultant damage to local wildlife must also be taken into account.

Issues with Sub-letting

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

Sub-letting in caravan parks is fraught with potential problems and should not be permitted. Over many years we have seen a variety of different scenarios, the worst of which involved the exploitation of vulnerable residents.

Share housing is not an appropriate use for caravan park cabins. Park cabins are generally comprised of a smaller floor area than other forms of rented premises, such as townhouses, apartments, units and houses. Some rental cabins resemble a bedsit or a motel room, with a floor area of some 25 – 30 square metres. Many cabins are single bedroom and even those cabins which appear to sleep 4 or more people often have bunk beds in a lounge/living area, and not in a separate bedroom. Were cabins to be permitted to be used as share or group- accommodation, the living conditions of those residents would be very poor.

As stated earlier in this submission, the resident-application process, which is largely comprised of the Application Form, is critical in the assessment and management of the residency risk. The issue of the safety of all residents must be held as paramount in the consideration of risk management in caravan parks and other forms of managed premises. Sub-letting creates the potential for un-screened residents to live in the caravan park, which exposes other caravan park residents to unnecessary risks to their safety as well as their peaceful, quiet enjoyment of their rented premises and communal areas.

Case Example-

A young woman attended our caravan park office, introduced herself and requested her mail. The Park Manager did not recognise the woman and asked for her cabin number to determine whether she was a resident or a visitor in the park. The woman explained that her friend was sub-letting his cabin to her and that he did not reside in the park any longer. The cabin in question was the property of the caravan park and not the resident.

The Park Manager asked whether the young woman had paid rent to the former resident. She confirmed that she had paid one month's rent in advance at a rate of \$210 per week. The rental we had been charging for that cabin was \$150 per week.

The Park Manager's search of the computer system revealed that the departing resident was some three weeks behind in rent and utilities charges, that a Notice to Vacate had been issued and an Application to VCAT for an Order of Possession had been lodged. The former resident did not attend the VCAT hearing and we were not able to contact him. Although we were able to claim most of the amounts owing from his bond, the young woman from whom he had accepted a rental payment was not able to recover any of her payment.

Violence in Managed Premises

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?

The current provisions in the Act for incidences of violence on managed premises are inadequate in that they do not provide sufficient protection to residents, park employees, park owners and contractors of the managed premises. This area of the Act requires expansion so that a greater range of anti-social, violent or otherwise abusive behaviours can be adequate cause for serving a Notice to Leave.

Additionally, VCAT's interpretation of the Violence provisions mean that the standard of behaviour required to satisfy this section of the Act is behaviour that is beyond the crime of assault, in that the violence must be "serious violence" and threats must place a resident in danger that is "continuing at the time the notice is served."⁴

Behaviour that would have a similar if not greater detrimental effect on the victim, but is not as overt as a serious physical attack or an imminent threat to a person's safety, is not currently considered sufficient grounds from issuing a Notice to Leave (for example, stalking, sexual or other harassment, threats of violence that are contingent such that a resident may not be in imminent danger, actual or threatened property damage and other forms of intimidation). Residents who engage in these types of violent or abusive behaviours have the right to challenge a Notice to Vacate in VCAT. Additionally, there is no requirement for VCAT to hear such applications urgently so although a Notice to Vacate for Danger (s.303) or Damage (s.302) is a notice requiring the resident to vacate immediately, the resident may legally remain on the premises until a warrant is executed by the Victoria Police. Typically, there is a 3-5 weeks wait for a VCAT hearing, a warrant must then be applied for from the Victoria Police and once obtained, there is a 2 week wait until the warrant is executed. A violent resident, having been issued an immediate Notice to Vacate, could potentially remain in the caravan park for up to 2 months before an eviction is effected. This is an unacceptable level of risk to the safety of caravan park residents, staff, owners and contractors. The Act should be revised to broaden the types of behaviour considered serious enough to warrant the issuing of a Notice to Leave, with the safety and wellbeing of the victims considered of greater relative importance than the residency rights of the violent perpetrator.

The serving of the Notice to Leave is in itself an occupational risk, which we continue to struggle to manage. The Act requires the Notice to Leave to be issued "as soon as it is safe to do so" but also the danger must be "continuing at the time the notice is served."⁵ It is unclear how a park owner can establish at what point a violent resident is "safe" to approach, and how a situation can be safe if danger is continuing. We have engaged a private security contractor to accompany staff when this Notice is required to be delivered to a violent resident. On several occasions Victoria Police have either refused to attend or refused to serve the Notice to Leave on our behalf because they are unsure of the resident's rights in this context. Further confusing this issue for the Police is the misleading information provided to residents by Consumer Affairs Victoria and the Tenants Union of Victoria, suggesting that the Notice is invalid and that an Order of Possession must be obtained and a Warrant executed before the resident can be lawfully removed from the premises.

⁴ Billings J, Kefford, J, Vassie A and Barker, H, *Annotated Residential Tenancies Act (VCAT) 1997*, ANSTAT, South Melbourne, 2014, P8-4

⁵ Ibid, P8-4

An alternative Notice delivery method should be considered in revising this part of the Act, such that the safety of the person issuing the Notice is, as well as the safety of other residents, the priority consideration. Suggestions for alternate delivery methods include SMS, though ultimately it is in the enforcement of the Notice to Leave and not in the issuing of the Notice, that presents the greatest difficulty in managing these situations.

Family Violence

36. How are the interests of the landlord best protected in circumstances where family violence impacts on an existing tenancy?

The significance of the issue of Violence on Managed Premises extends to situations of intimate partner violence (IPV) or family violence (FV). With the current provisions of the Act for Violence on Managed premises, the victim of the violence must report the incident to Management in order for a Notice to Leave to be issued. There should be provision for residents to serve a Notice to another resident in situations of IPV or FV, and this procedure should be supported by the Victoria Police.

With respect to the protection of the interests of the landlord, or the caravan park owner, in circumstances where family violence impacts on an existing tenancy, consideration should be given to method and amount of the bond paid by each resident at the beginning of a residency.

Typically Park management is alerted to the possibility of violence having occurred at the property by complaints of violence-related noise disturbances from neighbouring residents. It is not always possible to establish the facts of any violent incident as residents often attempt to conceal the occurrence or violence or damage to the premises. If the Act were to be revised such that the victim of violence is not held jointly responsible with all other residents for any damage to the property, it is unclear what procedure would need to be followed to establish which resident is responsible, and hence liable, for the damage. In the event that the level of respective liability for damage between residents cannot be determined beyond the reasonable doubt of the VCAT member, it would seem that the park owner would have to accept the costs with no recourse to claim on the bond. Such a situation would put upward pressure on rents, particularly in the lower-cost segment of the market as financial stress increases the risks of domestic violence⁶.

⁶ Australian Government, Australian Institute of Criminology, 2009, *Key Issues in Domestic Violence*, <http://www.aic.gov.au/publications/current%20series/rip/1-10/07.html>, accessed 27/04/2016