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 25 are Part 4A sites, or "owner-renters," and the remaining 125 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) 2011[1]. 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 crime[2].

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.

[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

Owner-renters of our 25 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.

Some combination of owner-renters and renter-renters is very common in our industry[3]. 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, *Alternate forms of tenure: parks, rooming houses and other shared living arrangements*, I have responded to those areas and questions raised that relate to issues of particular concern to our caravan park and its residents.

Classification of park models

1. **Are there aspects of 'annuals' tourist stays in mixed-use caravan parks that should be regulated under the Act, and if so, which ones and why?**

Annuals tourist stays should be expressly excluded from the Act, so as to differentiate this type of caravan park occupancy from a residential caravan park occupancy. A Long Term Holiday Site (Annuals) Agreement establishes the intent of both parties, i.e. that the site is to be used for holiday and not residential purposes, and hence the occupant does not meet the definition of "resident" under the Act. The Act should require that in order for the Act to apply, a prospective resident should have signed a Residential Site Agreement with the park owner. See my response question 4 for further expansion on this point.

2. **Are any other accommodation models emerging in the parks and villages sector, and if so, who are they targeted at and how do they operate?**

I'm not aware of any new models emerging in the parks sector. I consider that retirement villages operate in the aged care sector and hence do not compete directly with my business.

3. **What issues arise for residents in rental villages and independent living units, and what form of regulation would best suit these accommodation models?**

I have no experience of rental villages and independent living units as these operate in a different industry sector. Presumably the Retirement Villages Act or similar legislation would apply.

Part 4 Caravan Park Residency Rights

4. **Under what circumstances should a caravan park occupant be considered a 'resident' for the purposes of the Act, and when should the Act not apply?**

A caravan park occupant should be considered a resident for the purposes of the Act when it is agreed by both the park owner and the resident that this is the relationship they wish to enter into. The 60 Day qualifying period is arbirtrary and creates problems for operators of tourist parks particiluarly with

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

long-term holiday site occupants (annuals). Park owners are forced to place restrictions on the length of occupancy of tourists, lest they become "accidental residents".

Where a park has the express purpose of offering accommodation to an occupant for residential purposes, the occupant should be deemed a 'resident' under the Act from the first day of occupation, with the written permission of the park owner by way of a Residential (Part 4) Site Agreement. In hybrid caravan parks, where multiple forms of occupancy are provided, the intent of the occupant as well as the park owner should be made clear at the time of occupation, in the form of a written agreement that states whether the occupant is a 'resident' or a non-resident occupant (ie, a tourist or otherwise casual occupant). Should a situation arise where the non-resident occupant wishes to become a resident, the occupant should at this point apply to the park owner to become a resident in the same way in which any prospective resident must apply to reside in a caravan park, or any prospective tenant applies through a real estate agent in a private rental scenario.

A situation where a tourist occupant wishes to become a permanent resident arises most commonly where there is a relationship breakdown or unexpected loss of employment, and the occupant wishes to use what has been their low-cost holiday accommodation as their primary place of residence. The requirement for a prospective resident to apply to the park owner for residency under the Act will erradicate the problem of the accidental resident, and simultaneously grant prospective residents rights under the Act from their first day of residential occupation.

This is the same approach taken with respect to the definition of a "tenant" and associated rights under the Act. The Act defines a tenant as[4]—

(a) the person to whom premises are let under a tenancy agreement; and

(b) the person to whom premises are to be let under a proposed tenancy agreement;

The key criteria for this definition is the existence of a tenancy agreement. Thus is avoided a situation where a hotel, motel or serviced apartment guest accidentally becomes a tenant without the knowledge or consent of the hotelier.

5. Do any of the definitions in the Act relating to caravans, movable dwellings or caravan parks require clarification, and if so, what aspects of the definitions require clarification?

The definition of "caravan park" should be broadened to include free camping grounds provided by local Councils as a service to tourists. It is an abuse of power for Councils to set up in direct competition with privately owned caravan parks whilst evading all of the compliance obgliations (many of which Councils are responsible for administering) that the Victorian Government has deemed necessary to ensure the safety and security of occupants.

Our business has not encountered any problems with the existing definitions of "caravans" and "movable dwellings."

6. What are the risks and benefits for park owners providing, and residents having, security of tenure in caravan parks?

Caravan park residents currently have the appropriate level of security of tenure as reflects the nature of caravan park accommodation. Our residents' average length of occupancy is 15 months. Residents

[4] *Residential Tenancies Act 1997*, Part 1, section 3.

value the enhanced flexibility of shorter vacate notice periods and furnished accommodation which are characteristic of caravan park living. The effects of socio-economic disadvantage mean that longer term leases (and associated lease-break costs) can represent a burden, as caravan park residents are typically more vulnerable to issues of employment insecurity and marrital/relationship insecurity, which make shorter, more flexible rental arrangements significantly more appealing than the longer term lease arrangements that exist in the private rental market.

The Housing for the Aged Action Group submission calling for greater security of tenure of Part 4 residents of caravan parks does not take into account that the vast majority of residents in caravan parks are not retired people, but are far more likely to be of working age. 77% of the sites in our caravan park are occupied by single men in their 20s-40s. The next most frequent household type is childless couples in the same age range at 15% of total sites in the caravan park. This demographic values the mobility that caravan park living affords and will not benefit from the restrictions of long minimum lease terms.

Security of tenure is a feature that is included in the price of any interest in real estate. The difference in security of tenure is the major reason why a freehold interest in real property costs more to purchase than a leasehold interest. Lease terms such as security of tenure are priced by the market. If the Government were to impose greater security of tenure retrospectively to existing resident-park owner relationships, this would financially disadvantage caravan park owners, who have not charged for tenure and should not be burdened with this restriction. Additionally, this industry has undergone rolling legislative changes over the past 6 years. Further amendments, particularly amendments applying retrospectively, would exacerbate legislative risk in the industry and hence create an entry barrier to new caravan park developments, constraining the supply of affordable housing.

7. **What obligations should caravan park residents who own their dwelling have under the Act in relation to the appearance or condition of their dwelling?**

Part 4A dwellings that are more than 30 years of age are at risk of structural deterioration which could compromise the safety of residents. Additionally, the deterioration in the appearance of ageing dwellings can detract from the visual appeal of the caravan park overall. This form of visual pollution can reduce the liveability of the caravan park, threating the sustainability of the business and the quality of life of the residents.

At a bare minimum, residents should be required to present the park owner with a current building inspector's report on the structural condition of the dwelling on a 3-yearly basis from the time the dwelling is 30 years old until the dwelling is no longer fit for use.

Compulsory payment by the resident into a sinking fund for the ongoing maintenance of movable dwellings would be a viable option for preserving the appearance of dwellings and avoiding the emergence of slum-like conditions.

Additionally, there should be provision in the Act for a caravan park owner to terminate a residency agreement in the event that the cabin is unfit for human habitation, as evidenced by a mandated building inspector's report. Currently the Act provides for termination by the resident in this situation, but the caravan park owner has no right to issue a Notice to Vacate for this reason.

8. **How should the Act address the sale of dwellings in caravan parks?**

Copies of aforementioned building inspector's reports should be provided to any prospective purchaser of the dwelling (in the same way that a Vendor's Statement is provided to prospective

purchasers of residential real property). Additionally, when a dwelling of any age is to be sold on-site in a caravan park, the sale should be made subject to a satisfactory building inspector's report and chattel valuation. In this way, the condition and value of the dwelling can be established to protect the interests of purchasers, who will also become residents. Where a dwelling is sold off-site, the chattel value is inherently established within the transaction. The park owner will no longer have an interest in the condition of the dwelling, but in the interests of transparency and consumer safety, the purchaser should be provided with a building inspector's report.

Currently the Act provides that dwellings can be sold with the park owner's permission but that permission cannot be unreasonably withheld. Annotations to the Act mention the built-in or built-up nature of modern residential parks and the difficulty some parks present in the removal and relocation of park cabins. The Act does not consider that in many caravan parks, removal and relocation of park cabins is relatively simple as many parks were designed (as are dwellings) specifically to provide for such occurrences of cabin removal, installation and relocation within and outside of the caravan park. The Act should take into account the varying conditions of different caravan parks, rather than providing only for situations where park cabins cannot be removed without significant cost and/or damage to surrounding assets. Where there is no risk of damage to surrounding assets and park cabins can be relocated simply, park owners should be provided expressly with the right to refuse permission to sell a cabin on-site under certain circumstances. Specifically, caravan park owners should have the right to refuse an on-site sale where the cabin exceeds a certain age, or is not in a satisfactory condition to remain in the caravan park without detracting from the general appearance of the caravan park overall or presenting safety issues to occupants and neighbouring residents.

The Act currently does not provide any guidance regarding what might be reasonable grounds for objecting to the sale of a dwelling, and the penalty for unreasonably hindering the sale of a dwelling is substantial (300 penalty units for a commercial entity, over $40,000[5]). This component of the Act protects the rights of the resident-vendor but it is at the expense of the purchaser, whose safety may be compromised. Additionally, the lack of clarity around the basis of establishing the purchase price of dwellings (that is, their lack of relevance to the construction cost of dwellings and their chattel value), can mislead prospective purchasers into believing they are paying an outgoing resident for security of tenure, which is not part of the transaction.

The current provisions of the Act force park owners wishing to rid their property of unsightly and unsafe cabins into a position where eviction of the new purchaser (with 365 days notice) is their only recourse. Greater transparency around the purchase transaction with respect to the value and the condition of the dwelling is required to protect the interests of prospective purchasers. Greater flexibility regarding the granting or withholding of permission to sell dwellings on-site is required to protect the interests of the park owner and residents as a group.

9. **How should the Act address circumstances where a caravan park closes, or is to be sold and the land used for another purpose?**

In the event that a caravan park closes or is sold to a purchaser who will not continue caravan park operations, the park owner is required to give the residents 6 months' notice to vacate the caravan park. This notice period is excessively long for a Part 4 resident, as the Act requires an occupant be given only 60 days notice for similar situations of property sales in private rented premises and in rooming houses. Vacate notice lengths in the Act are generally shorter for caravan park residents than for other forms of tenancy as there is an understanding that caravan park residents are more mobile than tenants of rented premises and often do not own their furniture which can be costly and time

[5] *Residential Tenancies Act 1997*, Part 4A, section 206ZZH(4)

consuming to relocate. This situation of park closure seems to be an odd exception to that general principle.

With respect to Part 4A site tenants, the notice period for park closure or sale for an alternate use is significantly longer than 6 months. There is currently no provision in the Act for a park owner to give a Part 4A Site Tenant Notice to Vacate for the specific reason of a park closure. Instead, the park owner would have to utilise other vacate processes that are provided for in the Act. Specifically, section 317ZF(1)&(2) and section 317ZG(1) allow a park owner to issue a Notice to Vacate for no reason but require the resident be given a minimum of 365 days' notice, beyond the end date of any fixed term site agreement. Park owners cannot terminate a residency in the event of a park closure within the defined period of a fixed term site agreement. In this way, the Act provides Part 4A Site Tenants with substantially greater protection than exists for Part 4 residents and for tenants of other forms of rented premises.

With respect to compensation, the reality of a negotiation between a park owner and Site 4A Site Tenants in the event of a park closure may involve a discussion of payment in exchange for early termination of a fixed term site agreement with the consent of both parties. There is scope for the Act to formalise the rights of both parties in such an arrangement, for example the Act could mandate that in order for a fixed term site agreement to be terminated prematurely in this circumstance, a park owner would be required to pay a lease-break fee of a specified minimum amount, with the maximum amount to be determined by market forces. This would grant park owners greater flexibility in negotiating the sale or closure of a caravan park, and also set a minimum value of compensation to Part 4A Site Tenants. However, park owners should not be required to compensate residents for the costs associated with relocation if a park is closed or if a change of use occurs where there is no fixed term site agreement in place, as there is no commercial or equitable financial basis for this compensation nor legal obligation for this to occur in the context of a periodic agreement.

10. Under what circumstances, if any, should a residency right in a caravan park be transferable to a third party, and what mechanisms should be available to the park owner to object?

Sub-letting

As per my previous submission to this review, 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.

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 (names have been changed)-

A young woman attended our caravan park office, introduced herself as Stephanie White 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. Stephanie explained that her friend, Mark, 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 owner and not the resident.

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

The Park Manager's search of the computer system revealed that Mark 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. Mark 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, Stephanie, from whom Mark had accepted a rental payment, was not able to recover any of her payment.

Upon Death of Resident

Due to the communal nature of caravan park living, the ability to transfer a residency right in a caravan park without the park owner's consent (for example to a family member upon the death of a resident), adds to the management risk of the caravan park and also puts at risk the safety of all residents in the caravan park. The suggestion that the residency right be transferable ignores the park owner's obligation to ensure a peaceful and safe environment to all residents and inappropriately prioritises the rights of residents' next of kin over the rights of every other affected party.

A situation where a person becomes a resident without the park owner's consent effectively enables that person to bypass the resident-application process. Persons with a poor rental history, perhaps including violence on premises and/or other disturbances to neighbours, would immediately gain residency status and put at risk the safety, peace and quiet enjoyment of other residents.

Rather that the ability to transfer a residency right, with some kind of objection process for park owners, the simplest way to provide for this situation would be to offer the next of kin an exclusive option to apply for the residency right before the site or cabin is offered to the open market. That way the next of kin may easily take possession of the deceased residents' personal property, but also be subject to the same application process as applies to all residents of the caravan park, in the interests of a safe environment and sustainable business model.

Part 4A Site Agreements

11. What are the advantages and disadvantages of standalone legislation for residential parks, and what other forms of tenancy should be included in that legislation?

I can identify no additional advantage that could not be gained from simply amending the Residential Tenancies Act. Defining residential parks as distinct from other forms of caravan parks would be challenging and could result in arbitrary distinctions between the legal rights and responsibilities of site tenants in two different caravan parks. If the standalone legislation related specifically to Site 4A tenants and not to the particular caravan park, this would simply add to an already heavy compliance

burden on small business owners as the vast majority of caravan parks contain both Part 4 and Part 4A residents. It is likely that additional compliance obligations could result in the widespread termination of Part 4A site agreements in traditional hybrid caravan parks as park owners seek to reduce their compliance burden.

12. How would residents and operators benefit from a central register of residential parks and villages?

I can see no benefit to operators of a central register of residential parks and villages.

13. What, if any, terms or matters should be included in a site agreement, and if a site agreement were to be prescribed, what items should it include?

Our caravan park currently uses the standard form site agreement provided by the Victorian Caravan Parks Association. This would form a sound basis for a prescribed agreement. The agreement should include reference to the park owner's Caravan Park Rules, which is the instrument by which park owners manage specific risks, which may vary between caravan parks in different locations and different demographic profiles of residents.

14. What is an appropriate consideration period before signing a site agreement under the Act?

10 business days is an adequate consideration period and provides for the opportunity for prospective residents to have the agreement reviewed by a legal advisor and/or family members.

In the event that a prescribed site agreement is introduced, the consideration period before signing a site agreement should be eliminated, as the prescribed terms would be publicly available for review prior to a prospective resident entering into a transaction to purchase a movable dwelling.

15. Could the requirements around the disclosure of rent, fees and charges in a site agreement be amended to assist residents to better understand them, and if so, how?

A disclosure statement accompanies the standard form site agreement that is provided by the Victorian Caravan Parks Association. The disclosure statement clearly summarises the critical information for residents, such as the scale of rent, fees and other charges.

16. Should the Act regulate exit fees and deferred management fees, and if so, how?

Capping or prohibiting deferred management fees would simply put upward pressure on rents and dwelling purchase prices, so that the park operators (some of whom are publicly listed corporations) could sustain current levels of return to shareholders. In this way, the deferred management fee acts as a line of credit to park residents. Were DFMs to be prohibited, the costs of this form of retirement-style residential park accommodation would increase beyond the reach of many residents.

Enhanced disclosure of exit fees and DFMs would provide prospective residents with better quality information upon which to make decisions between accommodation providers and would not put an excessive burden on operators.

17. What, if any, changes to a site tenant's liability for breaking a site agreement should there be in the Act?

The existing provisions of the Act adequately limit the Part 4A Site Tenant's liability in the event that a site tenant is forced to vacate before the expiration of a fixed term site agreement.

18. If a rent increase is disclosed in a site agreement, what processes should be available to a site tenant to request a rent assessment?

Site agreements disclose the amount and frequency of rent increases and hence negate the need for the 60 day notice of a rent increase to be issued to site tenants. However, there should remain a mechanism for site tenants to request a rent review in circumstances where the facilities and services provided to residents by the park owner have declined, without a corresponding reduction in rent. This right to request a market-based rent review under these circumstances should exist continuously and should be disclosed in the site agreement as well as in the Consumer Affairs booklet provided to all site tenants on the commencement of their residency. There is no need to periodically remind residents of their rights in this respect each time a previously agreed rent increase is implemented.

19. What is an appropriate level of security of tenure for site tenants, and how should issues relating to a site tenant's investment in their movable dwelling be factored into this?

The existing provisions of the Residential Tenancies Act provide an appropriate level of security of tenure. Various caravan parks provide varying lengths of tenure under fixed term site agreements. The minimum term is 12 months and there is no maximum term. Terms of 20 years are not uncommon and some parks offer site agreements with a 99-year fixed term[6]. These terms are disclosed to prospective site tenants and during the extended consideration period, prospective site tenants are able to compare offerings and make an informed decision, often weighing up the relative advantages of guaranteed tenure against the costs of increased rent and other charges.

We have never engaged in the practice of selling mobile homes to site tenants, but rather have allowed site tenants to purchase their own mobile home elsewhere and install them in the caravan park. The first such site tenant commenced occupancy in 1983 and her cabin still remains on site, despite its run-down condition. Our original site tenants most often purchased their dwellings directly from the manufacturer, and sometimes second-hand from residents of other caravan parks. We did not receive any income from the sale of these dwellings and site tenants would have paid an amount that was close to the wholesale price. There was no expectation of guaranteed tenure as the site tenants' investment in their dwellings was clearly and inarguably for the dwelling and not for the site. Where site tenants are making investments significantly greater than the wholesale or cost price of their dwellings, it is understandable that some confusion will follow regarding the nature of the transaction as it relates to the land on which these dwellings are situated.

If the government were to impose greater tenure on existing tenancy arrangements park owners must be compensated for the encumbrance on the property that the long term leases represent. Park owners like ourselves, who have not benefitted from charging excessive purchase prices for movable dwellings, would be unfairly financially disadvantaged by such a legislative change.

In the event that the government were to impose a longer minimum term for new site agreements in existing caravan parks, the growth in the supply of this site type would be limited as traditional hybrid style caravan parks would move away from offering Part 4A site tenancies. Alternatively, park owners

[6] Elder, J. "Ombudsman for Retirees: Greens Push", *The Age,* February 21 2016, Victoria News

would charge significantly higher prices to site tenants to offset the constraints of encumbering their land with longer term site agreements. Either scenario results in a decrease in supply of affordable accommodation.

We made a business decision some 6 years ago to add no new owner-occupiers (Part 4A site tenants) to our caravan park. When site tenants vacate and a site becomes vacant, we either leave the site vacant or purchase our own rental cabin on the site to be let to Part 4 residents. In this way, we have reduced the total number of owner-occupied sites from 33 as at 30/06/2010 to 25 as at 30/06/2016. The ongoing legislative uncertainty around the sale of obsolete cabins, the possibility of compulsory compensation payable to residents in the event of park closure, and extended minimum term site agreements has made the provision of this form of accommodation comparatively less appealing.

20. What are the advantages and disadvantages of amending the Act to regulate the commission a site owner can receive from the sale of a site tenant's dwelling?

Commissions on the sale of the tenant's dwelling are payable under the Act only where the park owner is acting as an agent for the tenant in negotiating the sale of the dwelling. The Act requires that the amount of this commission be disclosed to residents in the Statement of Scale of Certain Charges, fees and commissions, under section 183 of the Act. This statement must be provided to residents no later than the date that occupancy commences.

Regulating the commission could take the form of requiring its disclosure in the site agreement, which is issued many days prior to the commencement of occupancy. This amendment to the Act would be advantageous to the site tenant and increase the transparency of the transaction.

Capping or prohibiting the commission that a park owner can receive from the sale of the site tenant's dwelling, where the park owner is acting as an agent for the tenant-vendor, would be advantageous to local real estate agents who would consider themselves a competitive alternative to the park owner acting as an agent. However, this situation would be disadvantageous to residents as park owners possess a marketing advantage over estate agents when selling dwellings within the caravan park, as park owners have immediate access to other residents and are established within the local community as a point of contact for prospective residents. Further, estate agents can provide inadequate or misleading information to prospective purchasers about the conditions of caravan park living, typically out of ignorance or misunderstanding.

21. How should the Act address circumstances where a residential park closes, or is to be sold and the land used for another purpose?

There is currently no provision in the Act for a park owner to give a Part 4A Site Tenant Notice to Vacate for the specific reason of a park closure. Instead, the park owner would have to utilise other vacate processes that are provided for in the Act. Specifically, section 317ZF(1)&(2) and section 317ZG(1) allow a park owner to issue a Notice to Vacate for no reason but require the resident be given a minimum of 365 days' notice, beyond the end date of any fixed term site agreement. Park owners cannot terminate a residency in the event of a park closure within the defined period of a fixed term site agreement. In this way, the Act provides Part 4A Site Tenants with substantially greater protection than exists for Part 4 residents and for tenants of other forms of rented premises.

The reality of a negotiation between a park owner and Site 4A Site Tenants in the event of a park closure may involve a discussion of payment in exchange for early termination of a fixed term site agreement with the consent of both parties. This is distinct from a compensation arrangement as it does not factor in the costs of relocation, but is payment for the reduction of the lease term. There is

scope for the Act to formalise the rights of both parties in such an arrangement, for example the Act could mandate that in order for a fixed term site agreement to be terminated prematurely in this circumstance, a park owner would be required to pay a lease-break fee of a specified minimum amount, with the maximum amount to be determined by market forces. This would grant park owners greater flexibility in negotiating the sale or closure of a caravan park, and also set a minimum value of compensation to Part 4A Site Tenants. However, park owners should not be required to compensate residents for the costs associated with relocation if a park is closed or if a change of use occurs where there is no fixed term site agreement in place, as there is no commercial or equitable financial basis for this compensation nor legal obligation for this to occur in the context of a periodic agreement.

22. What are the appropriate arrangements that should apply where a sole site tenant dies during the term of their site agreement?

Where the sole tenant dies during the term of their site agreement, the site agreement should terminate with 90 days' notice from the time the park owner issues a Notice to Vacate to the personal representative or next of kin of the deceased site tenant. Site fees would remain payable until the site has been vacated and the park owner regains possession of the site.

The notice period required to terminate a tenancy agreement in a rented premises other than a caravan park or rooming house is 28 days, unless an earlier date is agreed by both parties. It stands to reason that a longer notice period would be appropriate in this context due to the additional time required to sell or remove the dwelling. 90 days is sufficient time in which to organise the affairs of a site tenant and vacate the caravan park.

23. What would be an appropriate balance of responsibilities for maintenance and repairs in relation to Part 4A sites, site fixtures and dwellings?

Maintenance and repairs of movable dwellings are the responsibility of the site tenant, who owns the dwelling. Site fixtures, such as sheds, verandas and carports may be the property of the site tenant or of the park owner, depending on which party constructed or purchased the site fixture. For example, many site tenants in traditional caravan parks construct their own carports and sheds on the site. The park owner may have consented to the structures, but the site tenant retains ownership of these structures. Should repairs or maintenance be required to these fixtures, the owner of these fixtures, i.e. the site tenant, should be responsible for the cost of repairs and maintenance.

Where site fixtures are purchased or constructed by the park owner, and remain the property of the park owner (i.e. do not form part of a contract of sale of a dwelling), the park owner would logically be responsible for repairs and maintenance of the site fixtures. For example, park owners erect retaining walls, fire hydrants, underground infrastructure (drainage, sewerage and natural gas pipes, electrical conduit), which are located on sites but would not form part of the contract of sale of a movable dwelling. Instead, the park owner would retain ownership and hence retain the responsibility for ongoing maintenance. Section 179 of the Act could be extended to explicitly identify such park-owned structures as "communal facilities" for the purposes of the Act, and include a maximum time period within which urgent and non-urgent repairs to communal facilities must be undertaken.

The example provided in the Fairer Safer Housing Issues Paper is of damage to a dwelling caused by subsidence of land. In this circumstance, the site tenant would make a claim on their dwelling insurance policy. It is widespread industry practice to require that all site tenants maintain their own insurance policy covering public liability on their site as well as material damage to the dwelling. This can be a condition of the site agreement, or a rule contained in the caravan park rules. The insurance company may attempt to recover losses from the park owner, in which case it would have to establish

that subsidence had taken place and that the damage was caused by the subsidence. Regardless of whether the park owner was responsible, the cost to repair the site tenant's dwelling would be covered by their insurance policy. No amendment to the Act is required to clarify this situation, it is already sufficiently clear.

With respect to the TUV and HAAG's example in their respective submissions, regarding a fault in a concrete slab which could or did cause structural damage to the dwelling, this situation is less straight-forward. However, regardless of whether the concreter who poured the slab, the engineer who designed the slab, the building surveyor who approved the slab, or the park owner who commissioned the slab is responsible for the fault and the consequent damage, the site tenant's loss should be covered by their insurance policy.

With respect to significant repair work required within the cabin's warranty period, presumably the site tenant would make a claim on the manufacturer's warranty. If the dwelling was purchased from the park owner, the site tenant has recourse to existing consumer law, which would require the park owner to rectify the problem, replace the cabin or issue a refund to the site tenant.

24. What issues arise for site owners and site tenants in relation to a site tenant's use of their site and the park facilities?

The reason that rooming house and caravan park residents are restricted from using their site for non-residential purposes relates to the communal nature of caravan park and rooming house developments. Specifically, the operation of a business, trade or profession within a caravan park could provide a disturbance to neighbours and puts additional pressure on communal facilities, such as car parking, roadways, laundry facilities and water. This additional pressure is not provided for within existing site fee structures. Over the past 30 years, we have experienced numerous examples of residents attempting to operate a business from within the caravan park, to the detriment of other residents and communal park property.

Case examples (names have been changed):

1. Commercial cleaning

   Our caravan park contains a coin laundry. One resident, Bill, attempted to run a laundry service from within the caravan park. However, the park was not informed of, nor prepared for Bill's endeavour, and the result was that several complaints were received from other residents about the lack of availability of washers and dryers in the laundry. Bill agreed to cease using our facilities for commercial purposes and continued his residency without further problems.

2. Fruit growing

   One elderly couple, Mary and Michael, began growing fruit trees on their site and on a neighbouring nature reserve abutting their site. Neighbouring residents informed us that Michael and Mary sold the fruit they grew on the side of a major road in the local area. This practice was profitable to Mary and Michael because water in caravan parks is typically not metered (due to restrictions in place by the water authority). Hence, the residents were accessing "free" water. This occurred during the 1996 – 2006 drought, in contravention of the water restrictions. Michael and Mary refused our requests to change their water use behaviour. We were unable to prove they were using the site for non-residential purposes

and ultimately were forced to issue a Notice to Vacate for No Specified Reason in order to resolve the situation.

3. Motor mechanic

   One of our residents, Shannon, used the driveway and carport facilities on his site to run an informal motor repair workshop. Neighbouring residents complained about the engine noise, the music Shannon would play outside of his cabin whilst working on cars, and the volume of traffic through that area of the park. We had concerns about the potential for environmental contamination from engine oil. We successfully convinced Shannon to cease his business operations and his residency continued without further dispute.

In addition to these non-residential uses, we have also had some experience with unlawful uses of the site. Sometimes it is difficult or impossible to establish whether the resident is using the site for lawful commercial purposes or for unlawful purposes, which may be unlawful commercial purposes, such as making, growing or selling drugs.

25. Should the Act regulate the management practices of park operators, and if so, what reforms would address this?

The Act already provides for the rights and duties of all parties to a caravan park residency agreement. It's unclear what is meant by "almost feudal" park management and liaison with residents as stated in the Issues Paper. Most caravan parks are privately owned, small business operations with centralised management and relatively few employees. Management practices that do not respect the rights and dignity of residents are unlikely to be commercially successful and hence are not sustainable in the longer term. Competitive market forces cause organic improvements to management practices in all industries, without the imposition of government regulation.

Other issues common to caravan parks and residential parks

26. What are the advantages and disadvantages of making detailed guidelines under the Act for park residents' committees?

In our context, the introduction of detailed guidelines for park residents' committees will have no benefit to residents as the residents have shown no interest or inclination to form a committee at any point over the past 32 years.

As previously stated, the average length of occupancy for Part 4 residence is 15 months. Residents' committees are not appropriate for this form of tenancy.

27. What reforms, if any, are necessary to strengthen the existing provisions in the Act in relation to the application and enforcement of park rules?

Existing provisions in the Act are sufficient in relation to the application and enforcement of park rules.

28. **What reforms, if any, are needed in relation to how the Act regulates the rights associated with communal park facilities for permanent residents?**

We have experienced no issues or conflicts in relation to the rights of residents to access communal park facilities. All occupants enjoy equal access to communal facilities. The issues paper does not provide enough information regarding the nature of any problems in this area.

Community Considerations and Conduct of Other Residents

29. **What measures should park operators take to promote a harmonious park community, and what should a park operator's obligations be where an individual resident's conduct does not breach their agreement but negatively affects other residents?**
30. **How could the Act be amended to better assist park operators in promoting a harmonious park community?**
31. **What responsibilities should park residents owe to each other under the Act in terms of their conduct, and what should happen if those responsibilities are not met?**

The 120 Day (or 365 Day Notice for site tenants) Notice to Vacate for No Specified Reason is an essential management tool for dealing with antisocial behaviour within the caravan park that does not meet the standard required for immediate eviction. This is the simplest method of empowering park operators to provide a harmonious park community and ensure that individual resident's conduct does not negatively affect other residents.

Although this notice is rarely used, it can be the only available option for park operators in certain circumstances to ensure the safety, peace and quiet enjoyment of all park residents. Where a resident is creating a hostile environment in the park, through acts of aggression, bullying and intimidation, it can be impossible for a park operator to establish adequate proof to obtain an Order of Possession, yet this kind of conduct can destroy the viability of a caravan park as residents are forced to vacate the park or endure ongoing fear and intimidation from another resident. Managing caravan parks requires a consideration not only for the rights and responsibilities of individual residents but for all residents in the caravan park. The consequence of removing this option is the reduction in the physical, emotional and psychological safety of all residents in caravan parks.

Caravan park rules do provide a mechanism for explicitly communicating residents' responsibilities to one another, and there is currently provision in the Act for eviction in the case of successive breaches of caravan park rules, however the standard of proof required to satisfy a VCAT member may be impossible to meet. Where residents are the only witnesses, they may refuse to give evidence because of their awareness of their own vulnerability and fear of reprisals. This is true even where an Order of Possession is very likely to be the outcome of a case because Orders are not implemented immediately, but rather if the offending resident refuses to comply with an Order of Possession, a minimum of two weeks is required for Victoria Police to schedule the execution of a Warrant of Possession. Complainant-residents sense of vulnerability during this two-week period would be extreme.

The 120 (or 365) Day Notice for No Specified Reason is the best and most effective way to guarantee the protection of anonymity to the resident-complainant, and to enable park operators to maintain a harmonious and safe environment for all residents and thus ensure the ongoing viability of the business.

32. What reforms, if any, are required to ensure that liability under the Act for utilities in parks aligns with current marketplace practices?

Maximum allowable charges for electricity in embedded networks in caravan parks are set by the Essential Services Commission (ESC). Residents concerned that their electricity charges may be excessive compared to market rates should contact the ESC for an explanation of their decision making process.

With respect to solar power, currently the energy distributor must install a bi-directional meter to enable any user to generate solar power, so that unused power can be sold back to the grid. This is not achievable in the context of an embedded network. However, with recent innovations in solar power storage (battery) technology, it's foreseeable that caravan park site tenants could purchase their own solar power systems in future and reduce their energy usage costs.

Our caravan park does not currently charge for water usage, because we are unable to meter water usage. The water authority has refused to install (and then read) meters within our caravan park and simultaneously, refuses to allow us permission to install water meters and read them ourselves as is the case with an embedded electricity network. Due to the ongoing water shortage that is one of the effects of long term climate change, it seems counter-productive that the state water authority would prevent caravan parks from individually metering water and thus limiting water consumption.

33. What reforms, if any, are required to the provisions relating to keys for park residents?

The Tenant's Union's recommendation is consistent with management practice within our park. We would have no objection to the TUV's recommendation, as follows-

> *Section 161 (and section 206ZD) of the Act should be amended to state that the site owner is liable to provide resident with first copy of key/swipe card but tenant is responsible for any subsequent keys/swipe cards*[7]

34. How could the Act be amended to provide remedies to residents where caravan park planning requirements are not met?

Having read the HAAG submission, it's not clear in what way planning requirements in caravan parks are not being met currently and how these may affect residents such that they would require remedies.

35. What issues arise with the monitoring and enforcement arrangements for the regulation of caravan parks and residential parks, for example by local government, and how could these be strengthened?

During our last inspection by Council, we were advised of some local law amendments to swimming pool regulations and ordered to comply, which we did within the required time period. The amendment meant we had to relocate a sign in the pool enclosure and to lower the height of the pool gate so that it was less than 15cm from the ground. Additionally, council identified that a wall-mounted fire extinguisher in the laundry room was some 20cm too high and directed us to lower the extinguisher. When CFA conducted their inspection, they directed us to move the extinguisher back to its original position and advised that Council's understanding of the fire regulations was flawed and

[7] Tenants Union of Victoria submission to Laying the Groundwork, page 73.

that they fervently wished that Council would cease issuing directives related to fire safety. It would appear from our experience that caravan parks are over-regulated, at least in our Council ward.

36. What are the particular needs of park residents in relation to park and dwelling modifications, and how would these be best addressed in the Act?

Our caravan park does not in any way target resident over the age of 55 years through our advertising material or any other medium. However, we do have residents with mobility challenges. Specifically, we have two residents with obesity issues that have required internal doors and walls of their cabins to be modified. We have another resident who requires the use of a motorised wheelchair. This resident's case manager organised the construction of a powered shed in which to store and charge his wheelchair. All of these residents requested and were granted permission to make the required modifications. However, if the Act were to be amended such that the park owner's permission was not required, the outcome would compromise the safety of all residents due to the risks inherent in DIY construction and dwelling modification.

> Case example (names have been changed):
>
> An elderly resident, Bob, began storing discarded building materials around his dwelling. Park management contacted Bob and requested he remove the building materials. Bob informed us that he intended to use the materials himself to construct a veranda and deck to the rear wall of his cabin. He was informed of the requirement to submit his plans and request permission for the construction. Grudgingly and with significant protest, Bob wrote a letter broadly outlining his intentions. Bob has no carpentry qualifications or construction experience. The materials he intended to use were of uncertain quality, acquired from hard-rubbish days and disused building sites. We denied Bob permission to construct the veranda and deck. Had this construction taken place, the process of construction would have put Bob's safety at risk. The structural uncertainty of the completed veranda could potentially have compromised Bob's safety as well as any visiting neighbours or guests from outside of the caravan park.

We have numerous other examples of residents constructing their own sheds from recycled or poor quality materials, which are structurally uncertain, without the park's permission. Sometimes the structures are hidden from view by fences and neighbouring cabins so we are not aware of their existence until years after construction. This is an ongoing source of risk, particularly with respect to minimum fire separation distances as per the CFA's fire safety guidelines.

37. What other issues arise in relation to residency in caravan parks or residential parks?

Of most concern to me is the issue of violence on managed premises. In the event that a resident is violent towards another resident, a park employee or contractor, and therefore represents an unacceptable risk and should be immediately evicted, our recourse is to issue a Notice to Leave for Violence on Managed Premises[8]. In such circumstances our management procedure is call the Police as it is unsafe for staff to approach a violent resident directly. However, there have been occasions when Police have refused to attend, because we do not have a warrant. Often repeated calls to triple zero will yield Police attendance and patient explanation to the attendant officers is typically successful but their uncertainty around this issue creates a risk to park operators that we may not be

[8] *Residential Tenancies Act 1997*, Part 8

able to enforce the Violence on Managed Premises provisions of the Act. Unchecked violence is an obvious threat to the safety of residents and to the sustainability of the business.

Compounding the uncertainty experienced by Police is the misinformation from the Consumer Affairs Victoria helpline service. Whilst I acknowledge that the service is constrained by the accuracy of the information provided to them by the caller, some basic facts should be established by the helpline operator, such as whether the caller is a caravan park resident or a tenant of rented premises.

> Case example (names have been changed)-
>
> We received telephone complaints in the office from disturbed and fearful residents that another resident, Greg was observed shouting and attempting to damaging the door of his immediate neighbour, Naomi. Reports indicated that Greg had attempted to kick in the door, had thrown rocks at the door and was shouting threats to Naomi, who was inside the cabin with her young daughter. Greg and Naomi had been in a relationship which had recently ended and Greg was evidently unhappy with the situation. Park management phoned triple zero. After 60 minutes, no police attended. Park management phoned the local police station. The officer who answered stated that this is a civil dispute, that we would need to apply to VCAT for an eviction and that the police would not evict Greg without a warrant. The officer further advised that if the violence escalated, we should call triple zero. We made two further calls to triple zero over 90 minutes before a unit arrived. Two police officers spoke to me briefly in the park office. They asked about the resident's rights and the eviction process. I showed the officers the Notice to Leave, and the relevant sections of the Act. The officers agreed to issue the Notice to Greg, but when they arrived at Greg's site, he was on the phone to Consumer Affairs Victoria. The CAV helpline operator told Greg that he could not be evicted without the park owner obtaining an Order of Possession from VCAT. Greg repeated this advice to the Police and handed over the phone to the Police so that they could hear the advice from CAV first hand. The police officer read out the Notice to Leave over the phone to the CAV operator, at which point the CAV operator agreed that this Notice was appropriate. She repeated this advice to Greg. The Police escorted Greg off the property while our Maintenance staff changed the locks on the dwelling so that he could not return prior to an urgent hearing at VCAT. The senior Police Officer left her card with a mobile phone number for us to call if Greg returned. These details were also given to Naomi. Both Naomi and her daughter were physically unharmed but all residents in the area were visibly upset by the events.

We were fortunate on this occasion that the attendant Police officer was so considered and constructive in her approach. Another police officer may have taken Consumer Affair's advice without challenge and decided not to execute the Notice to Leave. The CAV helpline is there to provide information to residents and tenants about their rights but this must be delivered with due consideration of the rights of the park operator, the residents' obligations under law, as well as the safety and well-being of all residents.