Executive Summary

The Victorian Caravan Parks Association Inc. (VicParks) is the peak industry body for owners, managers and lessees of caravan parks in Victoria. Its members are predominantly regionally based. The industry provides much-needed affordable tourist accommodation and residential housing.

This submission relates specifically to the residential housing provided by caravan parks.

Around 7,000 Victorians live permanently in caravan parks or residential parks. Member data indicates that more than 80% of our 380 park members provide accommodation to residents who regard the park as their permanent residence.

Park residents are covered by either Part 4 or Part 4A of the Residential Tenancies Act:

- Part 4 – Covers residents who lease their dwelling from the park owner; and
- Part 4A – Covers residents who own their own caravan or dwelling, and enter into a site agreement with the park, to rent the site on which their home is located. This section of the Residential Tenancies Act was added as part of the Amendment Act (2010).

Because caravan and residential park residents are covered by the Residential Tenancies Act, strong protections are currently in place. Furthermore, the Act is undergoing a significant review as part of the Victorian Government’s extensive Fairer Safer Housing initiative, which covers most of the issues raised in the Terms of Reference particularly points (1) to (3). Therefore we do not propose to comment on these areas, due to extensive submissions already provided to Consumer Affairs Victoria. We have attached these submissions as part of Appendices A, B and C.

VicParks appreciates the opportunity to provide a submission to address some of the issues raised in the Terms of Reference.
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1. Industry Overview

The Victorian Caravan Parks Association Inc. (VicParks) is the peak industry body for owners, managers and lessees of caravan parks in Victoria. Its members are predominantly regionally based. The industry provides much-needed affordable tourist accommodation and residential housing.

Around 7,000 Victorians live permanently in caravan parks or residential parks. VicParks’ member data indicates that more than 80% of our 380 park members provide accommodation to residents who regard the park as their permanent residence. Some of these parks are fully residential; the majority are best described as hybrid parks that offer accommodation to both tourists and residents.

Park residents are covered by either Part 4 or Part 4A of the Residential Tenancies Act:

- Part 4 – Covers residents who lease their dwelling from the park owner; and
- Part 4A – Covers residents who own their own caravan or dwelling, and enter into a site agreement with the park, to rent the site on which their home is located. This section of the Residential Tenancies Act was added as part of the Amendment Act (2010).

Because caravan and residential park residents are covered by the Residential Tenancies Act, strong protections are currently in place.

Table 1, below, sets out the different types of accommodation provided in caravan parks.

**Table 1: Types of caravan parks operating in Victoria**

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<th>DESCRIPTION</th>
<th>CUSTOMER BASE</th>
<th>COMMENTS</th>
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<td>Part 4A Residential Park</td>
<td>Solely for Part 4A Site Tenants who own their own dwelling and enter into a site agreement to rent the site on which their home is occupied.</td>
<td>This is a growing segment of the market, where affordable housing is provided in a gated community, with shared facilities for use by the homeowners.</td>
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| “Hybrid” Caravan Park – Both Part 4A and Part 4 | Mixed customer base, comprising:  
  - Tourists on short-stay visits;  
  - Part 4 residents who rent their dwelling from the park owner; and  
  - Part 4A residents. | There is an emerging trend where hybrid parks are starting to regenerate, through improving the quality of the homes in the parks as well as improving their facilities. |
| Tourist Parks                     | A park that is purely focused on providing accommodation for tourists in either the park’s own cabins, on annuals’ sites, or on caravan or camping sites. | Many of these parks have less than 100 sites and purely rely on the tourist market. |

This submission focuses specifically on Part 4A residents who live in caravan parks permanently and own their dwelling.
2. **Who lives in caravan or residential parks?**

There are approximately 7,000 residents living in caravan parks or residential parks across Victoria, especially in regional areas.

There exists significant variance in the size, quality and costs to residents of park accommodation. This means the profile of residents can vary greatly.

In terms of residents’ age and life cycle stage, typically most residents are retired or pensioners and have decided to downsize. Some residents choose to live in caravan parks because this is the only form of housing they can afford, or because they crave a community environment.

Typically homes in park communities provide the most affordable home ownership option in regional centres and metro Melbourne, with the value of the homes being around 50% - 80% of the median house price in the areas where they are located.

Based on industry data, a typical new resident purchasing a home in a residential park:

- Has equity of between $250,000 and $450,000 and is on the pension;
- Is aged between 65 and 70 years;
- 40% to 50% of homeowners are single females, with a significant proportion also couples.

Residents in more traditional caravan parks have a very different wealth profile. Their home is generally a major source of their personal wealth, and is worth anything from $10,000 to $80,000.

The caravan and residential parks industry plays an integral role in providing affordable housing throughout Victoria.

3. **How does living in a caravan or residential park work?**

In a caravan or residential park the Part 4A resident owns the home and leases the land on which the home is located. The resident pays a weekly rental which covers all their land-based costs, as well as the maintenance of the communal facilities.

Typically homeowners living in park communities are over 65, are on the aged pension and are eligible to receive federal rental assistance to assist in paying the weekly site rental. Net rentals, after deducting rental assistance, average around 15% to 20% of the pension. This creates a sustainable financial model for both the homeowners and community owners. Under the Residential Tenancies Act (RTA) in Victoria there is a requirement for the owner of the park and homeowner to sign a site agreement that covers off the term of the agreement, the rent, how the rent is reviewed as well as the park rules for living in the community.

The average value of a home in a new residential community averages $150,000 to $320,000.

The arrangements for purchasing homes in residential communities, where the home is owned but the site and facilities are leased from the community operator, include:

- The lease arrangements are either a lifetime lease or a set period, typically 50 to 90 years;
- Homes can be re-sold through real estate agents, or through the community’s sales office;
- Communities are now starting to charge a Deferred Management Fee to ensure that there is an alignment between the end owner of the income stream and the ongoing maintenance of the assets in the community.
4. Residential Tenancies Act

Residents living in caravan and residential parks are covered under part 4A of the Residential Tenancies Act (RTA) which covers all aspects of the residency rights.

From 2008 to 2010 there was an extensive review of the RTA and how it protected residents who live permanently in caravan parks and residential parks. Part 4A of the RTA was proclaimed in 2010, as part of the Amendment Act.

The Act requires for there to be full disclosure to the resident before entering into a site agreement of the key commercial terms as well as the park rules.

Changes to the Act in 2010 introduced the requirements for the formation of Resident Committees as well as set out the rights and responsibilities for residents and owners. It also introduced notice periods to allow 20 days for potential residents to review the Part 4A agreement as well as a 5 day cooling off period once the agreement had been executed.

The following is a list of the applicable clauses of the RTA, showing the areas that are covered.

**PART 4A—SITE AGREEMENTS AND SITE – TENANT OWNED DWELLINGS**

**Division 1—General requirements for site agreements**
- 206B. Rights of site tenants
- 206C. Part 4A dwelling not a fixture
- 206D. Crown land
- 206E. Site agreements to be in writing
- 206F. Terms of site agreement
- 206G. Harsh and unconscionable terms
- 206H. Minimum terms for site agreements in new parks
- 206I. Site agreement consideration period
- 206J. Cooling off period
- 206JA. Cooling off period—Part 4A dwelling purchase agreement

**Division 2—Bonds**
- 206K. What is the maximum bond?
- 206L. Application to increase maximum amount of bond
- 206M. Tribunal may determine maximum bond
- 206N. Not more than one bond is payable in respect of continuous occupation
- 206O. Condition report
- 206P. Condition report is evidence of state of repair
- 206Q. Certain guarantees prohibited
- 206R. Maximum amount of certain guarantees

**Division 3—Rents and other charges**
- 206S. Rent, fees and charges under site agreements
- 206T. Limit on rent in advance
- 206U. Receipts for rent
- 206V. How much notice is required of rent increase?
- 206W. Site tenant may complain to Director about excessive rent
- 206X. Application to Tribunal about excessive rent
- 206Y. What can the Tribunal order?
- 206Z. Payment of increased rent pending Tribunal decision
- 206ZA. Additional charge
- 206ZB. Rent must be reduced if services are reduced
- 206ZC. Site tenant’s goods not to be taken for rent
Division 4--Other charges

206ZD. Fee for supply of key
206ZE. Site tenant's liability for electricity, gas and water charges
206ZF. Site owner's liability for electricity, gas and water charges
206ZG. Reimbursement
206ZH. Site owner must not seek overpayment for utility charges

Division 5--General duties of site tenants

206ZI. Site tenant's use of site
206ZJ. Site tenant must not use site for illegal purpose
206ZK. Site tenant's duty to pay rent
206ZL. Quiet enjoyment—site tenant's duty
206ZM. Site tenant must keep site clean
206ZN. Site tenant must not erect structures
206ZO. Site tenant must notify site owner of and compensate for damage
206ZP. Number of persons residing on Part 4A site
206ZQ. Site tenant must observe Part 4A park rules

Division 6--General duties of site owners

206ZR. Site owner must give tenant certain information
206ZS. Part 4A site plans
206ZT. Site owner must provide access
206ZU. Quiet enjoyment—site owner's duty
206ZV. Site owner must keep Part 4A park clean
206ZW. Duty of site owner to maintain communal areas
206ZX. Site owner to give additional information

Division 7--Part 4A park rules

206ZY. Site owner may make Part 4A park rules
206ZZ. Amendment of Part 4A park rules
206ZZA. What if the Part 4A park rules are thought to be unreasonable?

Division 8--Site tenants' committees

206ZZB. Participation in site tenants' committee
206ZZC. Site owner's duties to site tenants' committees

Division 9--Assignment and sub-letting

206ZZD. Assignment by a site tenant
206ZZE. Sub-letting by a site tenant
206ZZF. Site tenant may apply to Tribunal
206ZZG. Site owner cannot ask for fee for giving consent
206ZZH. Sale of Part 4A dwelling

Division 10--Rights of entry

206ZZI. Entry of Part 4A site and Part 4A dwelling by site owner
206ZZJ. Grounds for entry of Part 4A site
206ZZK. Manner of entry
206ZZL. What must be in a notice of entry?
206ZZM. Site tenant has duty to permit entry
206ZZN. What if damage is caused during entry?
206ZZO. What if a person exercising right of entry fails to comply with Division?
206ZZP. Offence relating to entering a site occupied by a site tenant
Again, VicParks notes that the Act is currently being scrutinised through an extensive review process as part of the Victorian Government’s *Fairer Safer Housing* initiative, which is expected to be completed in 2017.

One of the key benefits of being covered by the Residential Tenancies Act, and not the Retirement Villages Act, is that residents in residential parks or caravan parks are able to claim Commonwealth Rental Assistance which helps them to pay their rent. This means caravan and residential parks remain a truly affordable housing alternative for pensioners.

5. Industry Complaints Levels

The residential park industry is highly regulated and is covered by strong consumer legislation. As a result, caravan and residential parks with permanent residents receive very few complaints.

Over the past two years, only 18 complaints have been made to Consumer Affairs Victoria (CAV) from a resident base of around 7,000 people.

The table below was provided by the CAV and covers complaints against caravan and residential parks from 2013 to 2015.

**Table 2: Residential Park Contacts – 2013-14 to 2014-15**

<table>
<thead>
<tr>
<th>Residential Park Contacts</th>
<th>2013-14</th>
<th>2014-15</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requests for Information &amp; Advice</td>
<td>133</td>
<td>105</td>
<td>238</td>
</tr>
<tr>
<td>Inspection Requests</td>
<td>29</td>
<td>109</td>
<td>138</td>
</tr>
<tr>
<td>Complaints</td>
<td>10</td>
<td>8</td>
<td>18</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>172</strong></td>
<td><strong>222</strong></td>
<td><strong>394</strong></td>
</tr>
</tbody>
</table>

(Table provided by Consumer Affairs Victoria)

It should be noted that the role of CAV is widely promoted in all parks. CAV produces an information book on the Residential Tenancies Act that sets out the rights of residents living in a park. The RTA also requires this information booklet to be provided with every site agreement, before it is signed, so residents gain a full understanding of the legislation and their rights.

6. Drivers of Future Growth

The drivers of growth in the caravan and residential parks sector, lies in the need for affordable housing, especially for older people.

The *Victoria In Future 2015* report found the number of people aged 65 years and over in Victoria is likely to almost triple from 2011 to 2051. The proportion of Victorians aged over 65 will increase dramatically, to represent more than 20% of the state’s population by 2051.

Coupled with an ageing population, is the fact that many Australians either have little wealth to retire on, or are “asset rich but income poor”. The ABS has found that 50% of Australians have less than $450,000 in total equity (personal wealth).
There is a need to provide accommodation for the “over 50s” market which will allow them to both downsize and free-up equity. This is even more the case with Baby Boomer generation – currently aged 52 to 70 years old – who have a greater desire to downsize and spend the equity on lifestyle purchases and on improving their living standard.

At the same time, accommodation in a residential community typically provides the most affordable form of housing for those that simply cannot afford a more traditional home or a home/unit in a retirement village.

The need for affordable housing options is growing and is especially impacted by unemployment or divorce, which see people aged over 50 looking for alternate forms of housing that are affordable and sustainable, within their budget.

7. Retirement Housing Ombudsmen

VicParks believes that in industries and service sectors where there are high complaint levels and significant consumer issues, such as in the telecommunications industry, then there is significant value in having an industry-specific ombudsman.

However due to the very low level of complaints in the caravan and residential parks industry, VicParks sees little need for such a resource to specifically oversee the parks industry.

VicParks believes the industry is governed by a very balanced piece of legislation, which has been in place for 6 years and which is also going through extensive review, aided by industry, resident and consumer group submissions.

The best indication of whether current legislation is working is evidenced by the very few complaints received. Only 18 complaints were received from a resident base of 7,000, over the last two years.

8. Local Government Rating

Under the Local Government Act, parks are singularly rated with the homes owned by the residents not counted as part of the capital improved value of the park.

VicParks believes that this is a fair arrangement, as the park builds and maintains the following:
- Entrance and roads around the park;
- Street lighting;
- Community facilities;
- Collection of garbage around the community;
- Common area landscaping;
- Staffing of the park for security purposes.

Therefore, VicParks maintains that parks should continue to be singularly rated.
9. Conclusion

Caravan and residential parks have played a key role in the provision of affordable housing to Victorians, particularly in regional locations across the state that offer few other options. Around 7,000 Victorians live in residential communities, with the focus mainly in regional Victoria.

The industry is well regulated under part 4A of the Residential Tenancies Act, which also enables residents to receive Commonwealth Rental Assistance.

The industry receives very few complaints, with just 18 complaints received over the last two years. Given this is the case, VicParks sees no demonstrated need for an industry ombudsmen or further oversight.

The parks industry is singularly rated under the Local Government Act. VicParks would like this to be supported and maintained.

Finally, VicParks formally requests an opportunity to meet with the Standing Committee to elaborate on our submission and answer any questions that the Committee may have.

Thank you for the Committee’s consideration. Please do not hesitate to contact me should you have any questions or comments.

Yours sincerely,

Elizabeth White
Chief Executive Officer
Victorian Caravan Parks Association
Appendix A

Submission to the Review of the Residential Tenancies Act Consultation Paper – Laying the Groundwork

Victorian Caravan Parks Association
Submission to the Review of the Residential Tenancies Act Consultation Paper – Laying the Groundwork

1. Introduction
The Victorian Caravan Parks Association Inc. (VicParks) thanks Consumer Affairs Victoria for the opportunity to participate in the Review process and specifically to comment on some of the matters raised in the Consultation Paper circulated in June 2015.

We appreciated the opportunity to meet with the Review team in July to identify some current and emerging issues for the caravan park industry in relation to the provision of long-term residential accommodation in caravan parks, and look forward to working further with the team to further explore these issues.

At this meeting it was suggested that the initial response from VicParks to the Consultation Paper should take the form of an abbreviated list of issues that would set the agenda for further discussions with us as the Review process gets underway and the subsequent Issues Papers are developed by the Review team. In line with this recommendation, this submission will list issues for consideration, and look forward to further consultation with the Review team to consider options to resolve these issues.

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

The caravan park industry provides economic benefits and employment to regional towns and cities across the state; current state and federal government research indicates that there is significant opportunity for increased tourism visitation, and a subsequent increase in regional economic growth and employment as a result.

VicParks members employ more than 2500 staff in regional locations. The Victorian caravan park industry is estimated to contribute more than $475 million annually to the Victorian state economy.

The Strategic Plan of the Victoria Caravan Parks Association that was developed in 2013 identified that caravan parks hold more than 54% of all accommodation capacity in Victoria. However, there is an average vacancy rate of about 49-52% across the entire year, for all but the peak summer weeks in late December-January during the summer school holidays. There is certainly capacity for caravan parks to offer increased levels of full-time residential accommodation.
However, the impact of any proposed increase in the existing levels of regulation of the supply of residential accommodation in caravan parks could impact future supply, as the option for a higher return from tourist accommodation becomes more economically attractive and less burdensome to park owners and lessees.

### 3. Types of Caravan Parks

There are a number of operating models for the conduct of a commercial caravan park that offers residential accommodation

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<td>Mixed customer base, comprising a mix of tourists on short-stay visits, Part 4 Residents who rent their dwelling from the park owner, and Part 4A Site Tenants</td>
<td>We are also starting to see some hybrid parks starting to regenerate through improving the quality of the homes in the parks as well as improving their facilities.</td>
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<td>A park that is purely focused on providing accommodation for tourists in either the park’s own cabins, on annuals’ sites or on caravan or camping sites.</td>
<td>Many of these parks have less than 100 sites and purely rely on the tourist market.</td>
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4. Issues for Consideration

We would appreciate the opportunity as discussed at our meeting earlier this month to meet with the Review team to consider the following issues that we believe should be addressed within the Review:

(i) Dedicated Act

We would like to explore further the opportunity to move the legislation to a dedicated Act covering caravan parks.

(ii) Governing the rights and responsibilities of caravan park operators and annuals

The opportunity to include in the legislation a description of the governing the rights and responsibilities of caravan park operators and annuals – see separate synopsis of NSW legislation Attachment 1

(iii) Definition of resident

The definition of resident in Section 3 is problematic. It is difficult for the park owner to know with certainty whether a person is living in the park as his or her only or main place of residence.

We suggest that paragraph (b) (ii) of the definition should require continuous occupation for 120 days and a written agreement between the occupant and the park owner that the person will become a resident.

(iv) Definition of caravan

The definition of caravan in Section 3 includes a reference to an immovable dwelling situated in a caravan park – this is confusing and should be addressed.

(v) Definition of movable dwelling

The definition of movable dwelling in Section 3 included a request for a 24 hour test which we believe is artificial – and we suggest that this requires attention.

(vi) Definition of caravan park

The definition of caravan park in Section 3 needs attention to better define what is a caravan park and therefore the need to comply with the Act and the regulations. At the moment free camping areas set up by councils are excluded from this definition.

(vii) Section 206I

The 20 day consideration period is impractical. It often prevents people who are seeking urgent accommodation from accessing it quickly. We believe it is unduly onerous, particularly when coupled with section 206J which allows a cooling off period of 5 business days.

(viii) Section 206S
We suggest that this section be amended to codify deferred management fees, and that the site agreements include details of any DMF payable, when it is to be paid and how it is to be calculated.

(ix) **Section 206**

A distinction is required between a proposed rent increase that the park operator wishes to impose, and an agreed rent increase that the parties have jointly agreed to in the written agreement between the at the time of signing. In the latter case, the notice of increase ought not to contain the statement required by Section 206V (3).

These comments also apply to Section 152 although it is acknowledged that it is less likely to arise as an issue under Part 4.

(x) **Division 4 of Part 4 and Part 4A**

We suggest that the clauses concerning the residents and caravan park owners’ respective liabilities for gas, water, electricity, drainage and sewerage be updated to better reflect how these services are charged today. In particular the billing method for sewerage and drainage is not reflected in the drafting on the relevant clauses in terms of the residents’ liability for the charges.

(xi) **Division 3 of Part 4A**

That the clauses concerning notice with respect to a rent increase should be amended so there should be no requirement to give notice of a rent increase where there is an agreement between the parties as to how the rent is to be increased. [note – does this duplicate paragraph ix?]

(xii) **Abandoned Goods Procedures**

Current procedures for dealing with goods left behind or abandoned by customers (including residents) are confusing and cumbersome. The Residential Tenancies Act (Vic) 1997 prescribes different arrangements for disposing of goods belonging to residents than those prescribed for Annuals who hold Long Term Holiday Site Agreements, within Part 4.2 of the Australian Consumer Law and Fair Trading Act 2012 (Vic).

(xiii) **On selling of long term leases for Tourist Sites to third parties.**

We have become aware of a practice where operators are on selling long term leases for tourist cabins to third parties and then maintaining the management rights. VicParks’ concern with this model is that it provides no ongoing incentive for the parks to be improved over time and the title becomes heavily encumbered meaning that the park cannot be developed. VicParks would like to see a provision included in the legislation which prohibits this form of practice.

(xiv) **Specific comments:**

Page 9 – final paragraph. On what basis does the government say that the “the private rental market needs to be able to provide housing to low-income households? We know of no social obligation on the part of landlords to be active in social housing. How can government expect to regulate to require this? The lack of social housing for low-income families is a direct response to the failure of government to meet the demands for this, to meet rising population growth.
The private market would only find this sector more attractive for investment if the federal Commonwealth rental assistance levels were increased.

**Page 14** – the section on rights and responsibilities of tenants and landlords, fails to adequately delineate the difference in the applicable periods for service of a Notice to Vacate for Part 4 residents and Part 4A site tenants.

**Page 15** – Question 7 offers an opportunity for the Review Panel to consider the benefits to the caravan park industry and its customers that would arise from the removal of the current regulatory burden and high associated costs imposed by compliance requirements detailed in the Victorian Caravan Park Regulations 2011, especially the requirement for triennial renewal of park registration, and compliance with the *CFA Fire Safety in Caravan Park Guideline.*

**Page 18** - rent has increased faster than affordability – the federal rental assistance level needs to rise commensurate to rental increases rather than the average wage. As a result more people are suffering rental stress. This is not an industry problem but an issue for federal government.

**Page 34** – the majority of renters in caravan parks who rent cabins in parks are single people, not families, given that the accommodation is in caravans or cabins offering 2 bedrooms at the most.
5. **In conclusion**

We appreciate that a primary purpose of the Review is to review the current state of the rental market and its fairness and suitability for both tenants and landlords.

Our consideration of the “Laying the Groundwork” document provides little direct evidence that caravan parks fail in their responsibility to provide safe, affordable and secure housing for tenants who have chosen to live there. Because the majority of caravan parks are in regional locations in the state, they are often a scarce source of affordable housing for tenants, and provide a much-needed back-up for the government social housing programs. Regional caravan parks often support some of the neediest people in our society, including people on recent release from prison, women and families seeking refuge from domestic violence, and people with mental and other illnesses who have been unable to find local rented accommodation.

There is little statistical evidence to indicate that caravan park owners as landlords fail to provide security and tenure for their tenants.

As the Review progresses, it will be important to remember that caravan park owners who have invested significantly in the freehold or lease of their park, and in the costly compliance requirements to manage their businesses, have choices as to the best return on this investment. Should the legislative environment for Part 4 and Part 4A tenants become overly restrictive as a result of recommendations arising from this Review, there is a very real threat that caravan park owners might reduce their involvement in the supply of sites for residents in favour of tourists who generally bring a higher return on the sites. Any reduction in the current prescribed procedures for accepting and vacating permanent residents might trigger a move away from providing residential accommodation in caravan parks.

6. **Appendices**

6.1 VicParks comments on the NSW [Holiday Parks (Long-term Casual Occupation) Act 2002](#).

For all enquiries on this submission, please contact:

**Elizabeth White**

Chief Executive Officer

Victorian Caravan Parks Association Inc
APPENDIX 1

VicParks comments on the NSW Holiday Parks (Long-term Casual Occupation) Act 2002

Holiday Parks (Long-term Casual Occupation) Act 2002 (NSW)

Application – see section 5
The Act applies to any occupation agreement in relation to a site –
☐ Entered into by an occupant who has a principal place of residence elsewhere;
☐ Occupant installs own moveable dwelling on the site and leaves it there whilst the agreement is in force
☐ The occupant can occupy for no more than 180 days in any 12 month period (in a continuous or broken period)
☐ Term of at least 12 months.

Occupant entitled to disclosure – see section 9
Park owner must provide disclosure statement setting out –
☐ Fees
☐ Will additional fees be charged during peak periods
☐ Additional fees for additional occupants or visitors
☐ Any additional charges - power, gas, water
☐ Costs of preparing agreement
☐ How much notice of fee increases
☐ How much notice for termination
☐ How will disputes be resolved
☐ Can the dwelling be sold and what are the commission arrangements
☐ Restrictions on types of dwellings allowed
☐ What else can be put on the site – e.g. carport, shed
☐ Any restrictions on the use of common facilities
☐ Who pays the costs of relocation of the dwelling within the park during the term of the agreement.

Park Rules
Copy must be given before agreement is signed – see section 10
Park rules are terms of the agreement – see section 24
Process for amendment is in section 25

Form of Agreement – see section 11
Agreement must be in writing and include standard terms set out in Schedule 1 to the Act.
Additional terms can be included if they are consistent with the Act
If there is no agreement in writing the Act imposes standard conditions in Schedule 1.

What happens at the end of a fixed term? – see sections 18 to 20
☐ Fixed term agreement may specify that it continue
☐ If there is no provision for extension, the park owner or occupant may terminate
☐ If there is no provision for extension and neither party terminates, periodic agreement arises equivalent to the basis upon which the
occupation fee is paid – eg monthly, quarterly – can be terminated on notice equivalent to the relevant period

**Occupation fees and charges**
Can’t ask to be paid more than quarterly in advance

**Dispute Resolution**
Dealt with by Civil and Administrative Tribunal

**Recovery of Possession**
Process outlined in sections 28 to 30

**Abandoned Goods**
Process outlined
Appendix B

Victorian Caravan Parks Association

Submission to the inquiry on the Retirement Housing Sector
Response of the Victorian Caravan Parks Association (VicParks) to the Rent, Bonds and other Charges Issues Paper

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

Bonds

Broadly, the caravan park sector does not use bonds in setting up agreements for tenancy with Part 4 and Part 4A resident, and these are not a feature of the tenancy arrangements within the sector.

Therefore Questions 1-13 do not apply in general to the caravan park sector.

Rent

Again, many of the issues raised in this Paper do not apply to the caravan park sector.

14. What issues arise from the way in which the provisions for rent and other charges in the Act balance the interests of landlords and tenants?

VicParks believes that the current Residential Tenancies Act provides adequate safeguards for both the tenant and landlord in providing for a maximum of two rental reviews per annum. The VicParks Part 4A Agreement further requires that the site tenant be advised in advance when signing the Agreement of the method by which site fees are to be reviewed and increased – CPI, market adjustment or other fixed percentage rates.

Whilst we appreciate that some of the Review questions were informed from preliminary meetings with various stakeholders during preliminary consultation, it is our view that the caravan and residential park sector have well-regulated procedures in place that ensure fair and equitable outcomes for both landlords and tenants.

15. Limit to rent charged in advance

The Act currently places a maximum limit of 14 days’ rent in advance for the site, and 28 days’ rent for the dwelling. We believe this section of the Act works well and does not need amendment. Rent in advance is not a universal feature of tenancy agreements in this sector. Where it is required, it is generally for a week or a fortnight, to protect the landlord from tenants who void the agreement and leave the park with rent in arrears. Where the tenant also leaves behind large goods such as a caravan or other dwelling, there can be an extended time where the park owner is unable to derive income from the site until the required procedures for possession of the site are followed and concluded, or where there is cleaning and maintenance of the owner’s dwelling to be managed. An advance payment of 1-2 weeks is a reasonable protection against such events.

Thank you for your consideration of these comments.

Yours sincerely

Elizabeth White

Chief Executive Officer
Victorian Caravan Parks Association
Submission to the inquiry on the Retirement Housing Sector

Appendix C

Victorian Caravan Parks Association

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

This document is the response of VicParks to the Issues Paper – Security of Tenure released as part of the Review of the *Residential Tenancies Act 1997* ("RTA").

**Fairer Safer Housing Review – general comments**

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

The Consultation Paper and Issues Paper does not provide evidence that caravan parks are failing to provide safe, secure and affordable housing for residents, nor is there evidence of unfair management practices. VicParks submits that the need for legislative change in this context is not supported by specific examples or quantitative evidence of complaints, applications to or decisions by VCAT.

There is some clarification required to some aspects of the Government’s Issues Paper on Security of Tenure as it relates to caravan parks. Specifically, page 22 of the Issues Paper gives an incomplete and simplistic description of caravan parks and the current legislative framework which governs the industry. The first paragraph of this section describes caravan park residents as “…people who rent caravans, as well as caravan owners who rent the site on which the caravan is situated.” This description of caravan parks fails to include the large portion of caravan park residents who live in mobile homes or park cabins, which they rent from the park owner. The description in the Issues Paper may be using the legal definition of “caravan” as per the RTA, but considering the Issues Paper is generally written in layman’s terms, VicParks suggests that it might be more appropriate, descriptive and inclusive to provide an accurate description of caravan parks for the purpose of this review.

The introduction of park cabins in the 1980s and their increasing prevalence across the caravan park industry from the mid-1990s to today has meant a dramatic and ongoing improvement to the quality of accommodation enjoyed by residents of caravan parks today. Parks where residents are required to use shared toilet, shower and kitchen amenities are the exception rather than the rule. Today’s park cabins include bathrooms and kitchens with fixtures and fittings to a high standard.

As a consequence of the ageing Baby Boomer generation in addition to the legislative hurdles that have slowed the development of new Retirement Villages, the early 2000s saw the emergence of purpose-built residential caravan parks. The residency transaction included the purchase of larger, more luxurious movable dwellings, plus a weekly site fee for rent on which the dwelling is situated; plus, in some cases, a deferred fee payable in the event of the sale of the dwelling. In exchange, residents were offered much longer, fixed term residency agreements and a higher standard of communal facilities than was typically offered by traditional caravan parks at the time. However, there is no exclusion from the RTA for residency agreements exceeding 5 years, as there is for tenancy agreements exceeding 5 years, therefore the Park Owners and residents’ relationship was still bound by the RTA, despite the legislation never having conceived of this new economic reality.

Further revisions to the RTA in 2010 sought to govern this new residency relationship and provide additional protection for owner-occupier residents. This revision failed to mark a distinction between residents who had paid up to $300,000 for an on-site dwelling and those residents in
traditional caravan parks who typically pay anything from $7,000 to $50,000 for new and used cabins, a price which is a more accurate reflection of the deprecating nature of movable dwellings over their effective life of 30 years\(^1\).

Residents in purpose-built retirement style caravan parks expect that their investment in the cabin will appreciate over time commensurate with the surrounding residential property market. Typically, in purpose built or converted retirement style caravan parks, this expectation is reinforced by lengthy fixed terms (some of which are as long as 90 years) and deferred management fees, which are charged as a proportion of the sale value of the dwelling. Deferred management fees are considered a reasonable “trade off” for the park owner being prepared to encumber the land by lengthy fixed term site agreements. They also make the acquisition of the dwelling more affordable for prospective site tenants and provide ongoing capital for the maintenance and improvement of the park. Although the purchase price is for acquisition of the dwelling while the Park Owner retains legal ownership of the site upon which the dwelling is situated, in the past this had been misunderstood by some as a purchase of real property. Such misunderstandings are no longer in evidence with the introduction of Part 4A to the RTA in 2010, which has meant that all such issues are clearly disclosed to prospective site tenants and they have more than adequate time to consider professional advice regarding the sale and site agreements before choosing whether to complete the purchase and reside in a caravan park.

The business model of these types of parks is based upon lengthy periods of tenure. There is no evidence that these types of parks operate other than under fair management practices that provide safe, secure and affordable housing for residents.

There are, however, many parks that might best be referred to as hybrid parks. These parks provide a mixture of tourist accommodation and permanent accommodation to both Part 4 residents and Part 4A site tenants. The vast majority of these types of parks are located in regional areas of Victoria.

Typically, hybrid parks do not offer tenure beyond that currently provided for by the RTA and do not charge deferred management fees. The business model of hybrid parks generally requires a dynamic approach that allows the park owner to offer tourist sites, on-site cabins and caravans and Part 4A sites according to the demand from time to time. In regional areas hybrid parks are often the only source of emergency accommodation available within the community.

There has been no evidence produced to suggest that hybrid parks operate other than under fair management practices that provide safe, secure and affordable housing for residents.

1. **Security of Tenure**

28. What issues are there regarding the way in which security of tenure is provided for caravan park residents under the Act?

30. How can the needs for security of tenure for residents be appropriately balanced with the need to protect other residents’ rights to peaceful enjoyment of shared spaces in caravan parks?

Legal security of tenure is granted to residents of caravan parks by the RTA. The RTA protects residents from forced eviction, harassment and provides a formal dispute resolution process through VCAT. The same RTA provides tenants of private rental properties a similar level of security of tenure. The major difference between the two categories of renter is the number of reasons and notice period required to end a tenancy. The RTA was drafted in this way to reflect the inherent differences between renting privately and renting in managed premises such as a caravan park.

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\(^1\) Australian Taxation Office website, accessed 7/12/2015

Caravan park residency enables a flexibility of tenure that is more compatible with the greater mobility needs of caravan park residents, who frequently do not enjoy employment and/or income stability such that a long term lease commitment would be suitable. One of the major impediments to entering the private rental market for these residents is the possibility of a lease-break situation and its potential consequences, both short and long term.

Likewise, this flexibility is of equal use to caravan park owners as it enables the continued provision of affordable and safe accommodation. A major difference between operating a caravan park and a private rental property is that caravan park owners are responsible for the safety, well-being and quiet enjoyment of all residents who reside in the park as part of the park community. A private landlord is most often responsible for one tenant or tenants in one property, while an estate agent may be responsible for a large rental roll but the managed properties are rarely in immediate proximity to one another and the effects that one problem resident may have on his or her neighbours are of little concern to a real estate agent or private landlord, beyond any effects on the reputation of the property itself.

In the context of a caravan park, the park owner’s obligation to all residents means that it is important for the RTA to enable shorter notice periods once it has been determined that residents must vacate the premises. This is particularly vital in situations of violence and danger on managed premises.

Unlike private landlords who use residential property investments as a means of short-medium term capital speculation, income supplementation or tax minimisation, caravan parks owners rely on the caravan park business as their primary source of income. Caravan park owners consider themselves professional landlords with many years’ experience sustaining a profitable business model. Changes to notice periods for termination of residency will have a direct and significant consequence to the profitability of caravan park businesses, particularly in the case of hybrid parks, as well as to the quality of life for all residents in caravan parks. Moreover, the imposition of a lengthy minimum period of tenure in caravan parks is very likely to have the effect of reducing the number of sites, on-site caravans and cabins within caravan parks, particularly hybrid parks, available for permanent accommodation.

2. Security of Tenure and High-Risk Residents

31. Do the currently prescribed reasons and notice periods to terminate a caravan park resident’s residency rights strike the right balance for security of tenure, and if not what alternatives are appropriate?

There is a broad spectrum of tenants and residents in Victoria’s rental market. Some are viewed by landlords as higher risk, or potentially more costly to accommodate than others. This assessment is typically based on the landlord’s perception of the tenant’s ability to afford the rent on the property, the time and administrative cost of dealing with any behavioural problems that may arise and the probability and cost of any damage to the property. Frequently, residents of caravan parks are at the higher-risk end of this spectrum.

Screening potential residents is a difficult assessment for park owners as the information available to owners in making this judgement is imperfect; however the process is essential because these costs erode the profitability of the transaction and in the case of damage, also reduce the capital value of the property.

The park owner’s assessment of risk in tenancies will alter significantly in the event that the Residential Tenancies Act were to be revised to reduce the number of reasons a landlord can serve a Notice to Vacate or to increase the notice periods required to issue a Notice to Vacate.
These revisions would shift the legislative balance too far in favour of the resident against the interests of park owners. Park owners will attempt to minimise the costs of the residency risks outlined above by reducing their exposure to the risks, i.e. by accepting only those residents who pose the lowest risk of loss and by refusing to accommodate residents who are more likely to require eviction at a later time. This will inevitably provide more barriers to entry into the rental market for new renters and make renting more difficult for high risk residents to find housing.

Ultimately, such a legislative change would provide the most benefits to tenants and residents who require it the least, which are those tenants and residents who are deemed lowest risk, most likely because they have greater income security and a more stable rental history. This will come at the cost of disadvantaged tenants and residents who are at the greatest risk of homelessness.

Many caravan parks have the flexibility to shift their business model from operating within the residential property market to the tourism market with relative ease. In the event that park owners consider the regulatory burden to be too high or to present residency risks that are unacceptably and unprofitably high, many parks will opt to accommodate only tourist occupants and reduce the total number of high-risk residents accommodated. This will only add pressure to the already stressed social housing system in Victoria.

For those caravan parks that are not located in an area attractive to tourists, the logical consequence of increasing notice periods for park owner-induced termination of residency is to increase weekly rental amounts. This would threaten the affordability of caravan park accommodation and ultimately undermine the basis on which our business model is able to compete in the broader residential property market.

The industry finds that the current provisions of the RTA are sufficient with respect to minimum notice periods and reasons for terminating a residency.

### 3. Definition of Resident

29. Is 60 days an appropriate period for a resident’s arrangement to be automatically covered by the Act in the absence of a written agreement?

The Issues Paper fails to note that many occupants of caravan parks are tourists. There are three major groups of tourist visitors to caravan parks:

1. Travellers – who stay in caravan parks as part of their journey to another destination
2. Holiday Makers – where the caravan park is the holiday destination
3. Long Term Holiday Makers – where the caravan park is the holiday destination for an extended stay, often repeated on a yearly basis

Many caravan park occupants choose to stay in caravan parks because they are an affordable form of tourist accommodation, thus enabling Travellers to travel further during their holiday and for Holiday Makers to stay longer in one destination. Many Park Owners require that Holiday Makers vacate the park after a certain period of consecutive occupation in order to avoid any confusion regarding the application of the RTA to casual, tourist occupants.

Long Term Holiday Makers (or Annuals) own their own caravan or movable dwelling and have a contractual relationship with the Park Owner regarding the terms and conditions of site occupation. Many Long Term Holiday Makers have renewed their annual agreement with the Park Owner for decades. Sometimes there are multiple generations of one family occupying the site. These residents often occupy the site for long stretches of time over the warmer months. Their ability to do so was restricted by an earlier revision of the RTA, which reduced the qualifying period for residency from 90 days to 60 days. Consequently, standard industry Annual Agreements were revised to reduce the number of consecutive days Annuals are permitted to occupy a site from 60 to 40 days in order to avoid any accidental application of the Residential Tenancies Act to Long Term

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Holiday Makers. Notwithstanding this, park owners are required to be extremely vigilant to ensure that they avoid the “accidental resident”. This can occur where a husband and wife have a long term holiday agreement in respect of a site in the park and separate with one of them remaining in the family home and the other vacating the family home and moving into the park as his or her sole or main residence without telling the park owner.

Currently the definition of “resident” in the RTA includes a requirement for an occupant to have resided in a caravan park as his/her/their main or only place of residence for 60 consecutive days, where there has been no prior written consent to residency from the park owner. If this requirement were to be removed or reduced, there would be greater ambiguity as to which occupants are or are not covered by the RTA, an ambiguity which could easily be abused to the disadvantage of park owners.

To illustrate this point, we use a hypothetical example where a tourist books and pays in advance for three nights in the best cabin in a good quality, hybrid caravan park in peak tourist season. At the end of the three nights, the park owner would expect the tourist to vacate the cabin as there may be other customers who have booked that cabin. However, the hypothetical tourist could choose not to vacate the cabin, or to pay any additional fees for the cabin. The park owner would then request that the tourist vacate the park immediately, both verbally and in writing. In the event that the tourist then did not vacate the park, the park owner would phone the police and report the situation as an incident of trespass and request that the police remove the tourist from the premises. When the police attend, the tourist could claim that they have a right to occupy the cabin under the RTA, and that the park owner must obtain an Order of Possession from VCAT to legally evict the tourist from the site. Without the 60 day qualification in the definition of a resident, there would be significant ambiguity from the police’s perspective as to whether the tourist is a resident under the RTA or a casual occupant / trespasser.

Section 507 of the RTA states that the onus of proving that the RTA does not apply lies with the party claiming that the Act does not apply, which means that the park owner must apply to VCAT and provide adequate proof that the park is not the occupant’s sole or main place of residence in order to establish that an occupant is trespassing. The park may then have to apply to the Small Claims List of VCAT in order to redeem the site fees owed.

To provide certainty as to when an occupant of a caravan park is entitled to a residency right under the RTA, VicParks submits that it would be appropriate that the occupant has resided in the park as his or her sole or main residence for a period of at least 60 days and has entered into an agreement with the park owner that her or she is entitled to a residency right. The adoption of this two pronged approach will avoid the “accidental resident” syndrome.

4. Rent Control and Caps on Rent Increases

We note with some alarm that some respondents are calling for the introduction of rent control, including caps on rent increases. Page 18 of the Issues Paper states that rent increases can be used as a method of informal eviction and expresses a concern about “opportunistic behaviour” by landlords, though it should be noted no evidence was presented to support this claim.

It is the position of the VicParks that there is already a very robust rent increase appeal mechanism that is well understood by all. Any further legislative interference in this area will only distort market forces for the supply of this form of affordable housing. The Tenants Union of Victoria’s request for an Ombudsman system represents an unnecessary layer of bureaucracy which would prove a costly burden on taxpayers without adding any benefit to residents.

The policy of price ceilings or caps on rents as a means of providing affordable housing is a widely documented failure. Rent control reduces supply of rental units as development becomes less

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profitable and investors choose to fund other projects. Rent control also reduces the standard of maintenance of existing rental properties as improvements to properties do not attract additional income and hence, there is no longer a financial incentive to landlords. The type of behaviour that is associated with the term “slumlord” is due to rent control policy.

The goal of providing affordable housing to lower-income tenants and residents cannot be achieved by capping rents or rent increases will not be achieved by creating market distortions that limit the supply of new housing. Government policies to increase housing supply and decrease the cost of new housing supply will reduce capital values and rental rates, though we note the Government has specifically excluded from this review the critical considerations of State Planning Policy frameworks and compliance costs associated with the town planning and building permission process.

With specific reference to rents for Part 4A sites, the method and timing of rent increases is typically included in the schedule to the site agreement, for the duration of the fixed term. This creates certainty for Site Tenants and park operators. However, the requirement under section 206V(3) that park owners inform site tenants of their option to apply to the Director of Consumer Affairs to object to a previously agreed and documented rental increase is excessive and could result in frivolous applications to the Director. It is VicParks’ position that section 206V(3) should be amended so that it does not apply in the case of a Part 4A agreement containing an express agreement as to how rent is to be adjusted.

5. Sale of Cabins

The useful physical life of park cabins is influenced by the dated appearance (functional obsolescence) they develop over time, which will reflect poorly on the overall presentation of the caravan park. In order to maintain or improve the aesthetic quality of the caravan park, park operators have to replace cabins once their appearance has deteriorated to an unacceptable level. This situation can be complicated when an owner-renter occupies the cabin in question, as an operator cannot legally require a resident to upgrade their cabin.

To address this issue, some caravan parks have instituted polices or new caravan park rules, whereby cabins that are over a certain age cannot be sold on site. That is, when an owner-renter vacates the park and sells their cabin, the purchaser cannot occupy that cabin in the park. Instead, the cabin must be taken off site. This has created conflict with existing residents who feel that this clause interferes with their right to sell their dwelling as it may reduce the price for which they can sell their asset.

An alternative to introducing such a rule is to charge a Deferred Management Fee (DMF), rather than requiring that obsolete cabins be removed from site when sold. This means that any increase in the market value of the land is effectively shared between the resident selling the cabin and the Park Owner, who retains ownership of the land. DMFs also create a financial alignment between the Park Owner and the resident to ensure that the standard and functionality of the park and the dwelling are both maintained and improved over time. DMFs are typically charged where longer term leases are offered as they also provide a mechanism for compensating the park owner for encumbering their land with long term leases and are therefore an incentive for longer tenure. Park Owners who choose to charge a DMF consider it a critical part of the financial viability of their parks.

Both approaches effectively mitigate the costs of functional obsolescence to the park owner and the resident as they ensure that residents are not paying an artificially high price for land over which they have no legal right to possess beyond a right of occupation, which is adequately covered by weekly rental or site fees. The Deferred Management Fee approach also provides for the continued maintenance and improvement of the overall standard of the caravan park, which is of benefit to all residents.

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6. The Risks of Sub-letting

Sub-letting presents risks to all parties involved. Sub-letting frequently occurs without the permission of the park operator, which means that the sub-resident has not submitted a rental application and may present an unknown level of risk to other residents and the park’s property. The risks to the head-resident are similar to those of the park owner in a normal residency arrangement, i.e. non-payment of rent and property damage. However, the head-resident often has relatively little experience or training in property management and may be unable to assess the level of risk that a prospective sub-resident presents.

The greatest risk is borne by the sub-resident. Typically sub-letting occurs without any written record or agreement between the parties and without documentation relating to rent or bond paid. We have encountered many examples of sub-letting residents being exploited by head-residents. Such examples include:

- Sub-resident paid rent to head-resident who ceased paying rent to the park operator and severed all communication to sub-resident and park operator;
- Sub-resident paid a bond to the head-resident but with no written record of payment and no written terms and conditions, the sub-resident was unable to redeem the bond at the end of the residency;
- Head-resident and sub-resident were in cohabitation and sharing rental costs. Head-resident was claiming Rent Assistance through Centrelink on the total amount of the cabin rent fee while sub-resident was unable to claim any Rent Assistance as the sub-resident was unknown to the caravan park operator.

Although the RTA requires all sub-letting relationships to be documented, in practice this is unenforceable and the requirement is frequently flouted.

The RTA should permit park operators to prohibit sub-letting in the Caravan Park Rules to minimise the prevalence of these exploitative arrangements and to enable park operators to maintain adequate resident-screening measures to preserve the peaceful and quiet enjoyment of all residents.

7. Security of Tenure in Part 4A Residential Parks

31. What is an appropriate level of security of tenure for residents of residential parks, and how could the regulation provide for this?

The appropriate level of security of tenure for Part 4A Site Tenants in Part 4A Parks should be negotiated between the parties and should have regard for the price paid for the dwelling, the site fees charged by the park operator and the individual requirements and preferences of the prospective resident. Imposing minimum fixed term agreements beyond the minimum that is currently required by the RTA will create additional obligations on both parties, without regard to the value of the transaction, or the costs of compliance to each party.

Currently the RTA requires a 20 day Consideration Period for the resident to review the agreements with the park operator, in addition to a 5 day Cooling Off period. This effectively forms a 25 day consideration period, which is greater than that required by the Sale of Land Act and creates a hardship for those prospective Part 4A Site Tenants who need accommodation quickly.

8. Notice to Vacate to Part4A Site Tenant for No Specified Reason

33. What are the reasons residential park operators use the 365-day ‘no specified reason’ notice to vacate?

34. What would be the impact of removing the option for residential park operators to issue a ‘no specified reason’ notice to vacate to site tenants?
35. Rather than relying on a notice to vacate for ‘no specified reason’, how could the Act cater for residential park operators with legitimate grounds for terminating a site agreement for reasons that are not otherwise prescribed?

VicParks maintains that operators of caravan parks attest that this Notice is rarely used. However, when it is required it is an important tool 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 slowly 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.

Case example (names have been changed)-

Some years ago, Park Management received numerous complaints from several residents about the behaviour of an owner-occupier resident, John Smith. Smith was alleged to be selling drugs from his cabin to residents and visitors to the park. Further, an elderly neighbour of Smith’s complained that he had been the victim of verbal threats of physical violence, which he believed were credible.

Whilst the Park Manager quickly established this was an illegal use of the site and that this, plus the threats to neighbouring residents, was adequate grounds for eviction, none of the complainants were prepared to make a statement to support an application to VCAT. All of the complainants wished to remain anonymous out of fear of reprisals from Smith, who was widely believed to be violent and known to be aggressive.

The Park Manager organised for a security patrolperson to monitor the site overnight, and the patrolperson reported that some 12 vehicles had attended Smith’s site, the drivers had stayed only a few minutes at a time and then left the park. The patrolperson noted the vehicles’ registration plates. This list along with a summary of the neighbouring residents’ complaints was communicated to a detective at the local police station. The detective responded that there was inadequate evidence for a search warrant and Smith’s lack of a landline telephone and use of prepaid mobile phones meant that the police were unable to monitor Smith’s telephone calls, leaving the police few options for collecting evidence. None of the complaining neighbours were interviewed by police.

The Park Manager was able to inspect the site, with written notice in accordance with the RTA but did not observe any evidence of drugs.

A Notice to Vacate for No Specified Reason was served and after receiving advice from the local legal service, Smith vacated before the vacate date specified in the notice.

Without the ability to serve a Notice to Vacate for No Specified Reason, the park owner would have had no effective ability to remove the site tenant and restore peace and amenity to the park for the benefit of all other members of the park community. Certainly the very high bar imposed by section 368 of RTA does not provide an effective solution.

The Notice to Vacate for No Specified Reason is an essential option for park operators, given the burden of proof that is required to obtain an Order of Possession for other reasons, particularly where witnesses are in fear of their safety. 365 days is a generous notice period for Part 4A Site Tenants to either sell or relocate their movable dwelling and it should be noted that in cases of hardship, residents can apply to VCAT for an extension of their notice period.
Conclusion

Continuous legislative changes to the caravan park industry have the potential of increasing the compliance burden on park operators and without reference to demonstrated problems in the industry, improvements to security of tenure specifically will create market distortions that undermine the government’s stated objective.

A more thorough understanding by Government of the needs of the caravan park industry, the needs and preferences of its residents, and its contribution to affordable housing is required before any reforms are proposed. Changes to legislation with respect to the definition of a resident, rent controls and caps on rent increases, minimum fixed lease terms and the reasons and notice periods for park operator-induced terminations are unjustifiable and unhelpful.

There are some areas of the RTA that should be modified to improve the efficiency of the industry and health and safety of residents. Comments on them are listed in the Schedule. VicParks would welcome future discussions with the Review Panel to obtain favourable outcomes for all stakeholders.
SCHEDULE

SUBMISSION OF VICTORIAN CARAVAN PARKS ASSOCIATION

RTA REVIEW

FURTHER ISSUES FOR CONSIDERATION

1. VicParks submits that the Review presents an opportunity to consider the definition of *caravan park* prescribed by the RTA. Currently the definition of *caravan park* in section 3 does not catch areas established and set aside by councils and others for use by campers and recreational vehicles without payment of a fee.

Whilst section 512 of RTA quite properly removes from the operation of RTA caravan parks operating for a limited period in conjunction with a festival or similar event or to house seasonal workers or short term construction workers, there are an increasing number of areas established and set aside by councils and others for use by campers and recreational vehicles without payment of a fee that are not regulated properly or, in many cases, at all. Very often these areas have most of the hallmarks of a caravan park but are not currently required to be registered, nor are they required to comply with the significant regulatory burden imposed on caravan parks under the RTA and the *Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2010* (Regulations).

Of most concern is that these de facto caravan parks are not required to prepare and maintain an emergency management plan in accordance with the Regulations nor to achieve a level of fire safety satisfactory to the Country Fire Authority.

The evidence collected by VicParks shows that, typically, these parks have no on site manager and, in most cases, no effective supervision at all. That being the case there is nothing to prevent persons from residing permanently on these areas. Any person doing so currently has no tenancy rights at all.

VicParks submits that it is appropriate and desirable that these areas be legislatively classified as caravan parks and be subject to the same regulatory requirements as caravan parks that currently fall under the operation of RTA.

For this purpose, VicParks submits that the following definition of *caravan park* would be appropriate -

*An area of land either –*

(a) *set aside for travellers to park and occupy movable dwellings; or*

(b) *on which movable dwellings are situated for occupation –*

irrespective of whether consideration is paid or not, whether or not immovable dwelling are also situated there.
2. The Review presents an opportunity to move to dedicated legislation covering caravan parks which would give greater clarity and certainty for caravan park operators, residents, site tenants, tourists and annual holiday site holders.

3. There is also the opportunity to include in the legislation governing the rights and responsibilities of caravan park operators and annuals – see separate synopsis of NSW legislation incorporated into the previous VicParks submission.

   The relationship between caravan park owners and long term holiday site holders is currently unregulated in Victoria. Whilst VicParks provides for the benefit of its members a best practice agreement regulating the arrangements and strongly advocates that its members use it, there are a number of caravan parks that are either not members of VicParks or, for some reason, simply elect not to use the agreement.

   Legislation dealing with this would provide clarity and certainty for all stakeholders generally.

4. More specifically clarity and certainty is required in relation to the manner in which abandoned goods are to be dealt with by a caravan park owner.

   Currently, goods abandoned by residents or site tenants are to be dealt with according to Division 3 of Part 9 of RTA, whilst goods left behind by tourists or long term holiday site holders are to be dealt with according to Part 4.2 of the Australian Consumer Law and Fair Trading Act 2012 (Vic). Having two separate regimes applying in tandem is confusing for all stakeholders. The confusion could be eliminated by dedicated legislation relating to caravan parks.

5. Definition of caravan in section 3 includes immovable dwelling situated in a caravan park – this is confusing.

6. Definition of movable dwelling in section 3 – the 24 hour test imposed by the definition is artificial and needs clarification.

7. Section 206I – 20 day consideration period is impractical. Often prevents people seeking urgent accommodation from accessing it quickly. This requirement is unduly onerous, particularly when coupled with section 206J which allows a cooling off period of 5 business days.

8. VicParks submits that it would be appropriate to amend section 206S to specifically require all site agreements to include details of any deferred management fee payable, when it is to be paid, by whom it is to be paid and how it is to be calculated.