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Dear Dr Noone,

Options Paper: Tenancy policy framework for residential parks

The Tenants Union of Victoria (TUV) welcomes the opportunity to respond to the *Options Paper: Tenancy policy framework for residential parks*.

The TUV was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state. We assist about 18,000 private and public renters in Victoria each year. Our commitment is to improving the status, rights and conditions of all tenants in Victoria.

While we welcome progress toward developing new regulations covering caravan parks and moveable dwellings as committed in the 2009 Statement of Government Intentions, we remain concerned that an exclusive focus has been taken on residential parks.

Reform options for caravan parks

The caravan park industry is in a constant state of change. Increasing land values and changing demand patterns driven by deteriorating housing affordability for low income households have motivated many caravan park operators to adopt new strategies to derive a greater return on their investment. Many caravan park operators have sold their properties for redevelopment or sought a greater return by targeting more profitable segments of the market, including premium holiday accommodation and long term accommodation.

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There has been a significant loss of traditional caravan park sites over recent years. Permanent residents are consequently forced to seek accommodation in other parks or in other accommodation tenures. This can prove a costly endeavour, as well as causing significant social dislocation for those obliged to move significant distances to find affordable housing.

Significantly, there has also been considerable growth in residential parks providing long term accommodation, marketed to low-income retirees. Residential parks remain subject to the same tensions and influences as other types of parks due to the commercial nature of their operation.

Options Paper

The TUV welcomes the release of the Options Paper as an opportunity to generate discussion on the tenancy regulation of caravan parks. The current regulatory framework does not adequately protect tenants and residents in a number of significant areas. As with the broader Residential Accommodation Strategy, this review process provides the Victorian Government with an important opportunity to restore the balance of regulation of caravan park tenancies and implement some overdue reforms addressing security of tenure, management practices and dispute resolution.

We understand the Options Paper is at least partly based on the premise that existing regulatory frameworks for caravan parks are deficient and require improvement. Given this, a full exploration of how to better provide effective consumer protections is warranted. However, we are concerned that the structure of Options Paper does not allow a full discussion of the means to address each of the problems identified.

The Options Paper considers most of the issues identified in responses to the Residential Accommodation Strategy Issue Paper and the stakeholder consultation conducted by PricewaterhouseCoopers, including security of tenure, deferred management fees, park rules, rent increases and repairs and maintenance. However, the structure of the paper does not provide the ability to compare the relative merits of different proposals to address these key issues. For example, the presentation of five discrete reform options does not allow a direct comparison of the different proposals to improve security of tenure contained in each of the options. A preferable method would be to compare the relative merits of each of these proposals with a view to determining which provides the greatest improvement.

In order to address each of the key problems faced by caravan park residents in a comprehensive manner, we have chosen to provide comment on the key conceptual issues that remain unresolved in the Options Paper, before providing some specific recommendations on reform options for the RTA caravan park provisions.

Definitional issues

The definition of residential parks used in the Options Paper appears to conflate this type of caravan park with retirement villages due to the age and employment status of residents common in these accommodation types. By considering residential parks as a unique and contained category, distinct from traditional caravan parks, the Options Paper fails to resolve a key definitional issue. We argue that working from this definition leads to reform options which will create additional complexity without providing improved protection for the tenancy rights and interests of caravan park residents.

The RTA defines a caravan park as ‘an area of land on which movable dwellings are situated for occupation on payment of consideration, whether or not immovable dwellings are also situated there’. Distinct types of caravan parks, such as residential parks, remain undefined in the act and thus require further definition.

A caravan is defined loosely by the act, meaning ‘(a) a moveable dwelling; or (b) an immovable dwelling situation in a caravan park’.¹ Further, a moveable dwelling is defined as ‘a dwelling that is designed to be moveable, but does not include a dwelling that cannot be situated at and removed from a place within 24 hours’. In effect, this means any dwelling located in a caravan park is considered a caravan, regardless of construction method or occupancy type.

Residential parks could be defined by either the type of dwelling provided (caravan, UMD, fixed dwelling), type of occupancies (renter/renter, owner/renter) or type of occupants (age, employment status etc). However, a preferable approach is a broad definition of a caravan park capable of including all park types and the diversity of dwelling, occupancies and occupant types provided.

¹ But, except in part 14, does not include such a dwelling occupied in pursuance of a contract of employment.

The Options Paper defines residential parks by the predominant occupant and dwelling type. That is, 'owner/renters' are defined by the following attributes:

- They are seeking to rent a site in a caravan or residential park for a long term period
- They have built or purchased (and thus own) an unregistered movable dwelling that will be located on the rented site, and
- They intend to use the unregistered movable dwelling as their primary place of residence.

Residential parks are defined by the following attributes:

- Long term residents who own their own dwelling but rent the site upon which it is located
- Residency is part of a package including agreement on land rental, access to park services and purchase of UMD

UMDs are self contained dwellings constructed according to RTA (Caravan and Moveable Dwelling) Regulation

This definition apparently limits residential parks to the exclusive occupancy of owner/residents and overlooks the considerable diversity of caravan park operations in Victoria.

While the definition used describes the practice of some caravan parks, there are many parks providing a similar form of accommodation within a range of other circumstances. Caravan parks in Victoria exist across a spectrum ranging from residential parks conforming to the definition used by the Options Paper through to traditional caravan parks offering only holiday accommodation. Between these two polar opposites, significant diversity exists. The TUV is aware of many parks providing long term accommodation in UMDs within a traditional caravan park setting. Some parks provide only small numbers of such accommodation, while others have equal numbers of owner/renter occupied UMDs and renter/renter occupied UMDs. Some of these caravan park operators target over 55 year olds, while many do not. Further complexity occurs where fixed dwellings have been constructed within caravan parks alongside UMDs and registered moveable dwellings.

Based on the definition used by the Options Paper, none of the options offered provide an adequate way of delineating pure residential parks and parks providing a diversity of accommodation or of overcoming the problem that owner residents in non- residential parks may be treated differently to owner residents in residential parks.

The TUV is also unaware of sufficient justification for providing one class of occupants with a greater level of consumer protection than another. We do not consider asset ownership in itself makes those caravan park residents any more deserving of greater consumer protection than those residents who do not own an asset. 'Renter/Renters' live in substantially similar living arrangements, facing many of the same issues and uncertainties as those owner/renters living in caravan parks on a permanent basis.

Recommended reform structure

A more appropriate basis for regulatory reform is to define caravan parks broadly and then distinguish between occupancy types. This allows for the articulation of both shared provisions relating to all residents and specific provisions applying to owner/renters and renter/renters. Delineating the rights and responsibilities of both occupancy types would provide far greater clarity for both residents and operators in all forms of caravan park without the complexity of the definition used by the Options Paper. Specific occupancy provisions related to dwelling types could also be detailed.

This distinction would then provide the basis for a more coherent and comprehensive reform to Part 4 of the RTA without unnecessarily excluding a significant proportion of caravan park residents or artificially delineating between the same occupancies in different parks.

Furthermore, we recommend the RTA definition of movable dwelling be amended to limit its application only to dwellings genuinely designed to be movable. This can be achieved by removing the reference to dwellings that cannot be removed within 24 hours. The revised definition would state simply a dwelling that is designed to be movable. As this operates in conjunction with section 517², this would leave no ambiguity as to the status of the dwelling type.

Table 1 (below) sets out the structure of the reformed caravan park provisions.

² S. 517 states the [Building Act 1993](#), except [Part 12A](#), does not apply to movable dwellings situated in a caravan park but does apply to buildings situated in a caravan park that are not movable dwellings.

Table 1: Reformed Part 4 Residential Tenancies Act

Reformed Provisions	Purpose
Definitions	Define classes of occupants according to the nature of their occupancy (owner/renter, renter/renter) Define classes of vehicle or dwelling (registered caravan, UMD, fixed dwelling)
Division A: Shared Provisions	Detail shared provisions relating to common issues for all residents Detail park operators duties to all residents
Division B: Owner/Renter Provisions	Detail common provisions to all dwelling types Detail specific provisions for fixed or moveable dwelling types
Division C: Renter/Renter	Detail common provisions to all dwelling types Detail specific provisions for fixed or moveable dwelling types

Recommended reforms

We argue that a range of changes to the existing RTA caravan park provisions can create a fairer environment for all caravan park residents, including both owner/renters in residential park environments and renter/renters. Our suggested amendments are detailed in Table 2 (attached), while some key areas are discussed below.

Security of tenure

No reason notices to vacate undermine residents' security of tenure as unscrupulous operators can misuse them. Twelve other reasons for evicting tenants and residents are already prescribed by the Act. Express reasons give residents certainty about the behaviour that is to be expected if they wish to maintain their occupancy, and do not unduly restrict the capacity of operators to conduct their businesses.

Abolishing no reason notices to vacate would provide residents with greater security of tenure while respecting the right of operators to deal with their property in a reasonable manner. It is important to note, abolishing no reason notice to vacate does not in any way inhibit a park operators ability to issue other notices to vacate. We recommend that all other notices are aligned with the termination requirements for the mainstream residential tenancies provisions in recognition that caravan park residents are occupying as their main or principal place of residence.

If no reason notices are abolished as in Option 1 or amended as in Option 2, a caravan park owner could still issue a change of use notice to vacate (6 months) but not before end of fixed term, while a mortgagee entitled to possession could issue a notice to vacate irrespective of whether a fixed term agreement is in place. Option 1 states that residents subject to a verbal periodic tenancy can be evicted after each rental period - this is confusing, meaning this option provides for limited security of tenure. It should be noted this is an example of the lack of clarity throughout the Options Paper on the distinction between site rental agreement and tenancy agreement.

Caravan park residents have inferior security of tenure in comparison to other tenure types due to the 60-day rule. The TUV strongly recommends the 60-day rule be struck out of the Act.

The TUV believes protection against retaliatory evictions is best provided by giving the tribunal the power to refuse an application for possession where the tribunal finds the park owner is motivated (even partially) because the resident has complained to a government agency or has attempted to enforce their rights. Such provisions exist in South Australia.

Deferred management fees

The TUV does not believe the imposition of lump sum deferred management fees when residents sell their UMD and exit a park is a justifiable practice. Some park owners justify the imposition of such fees on the basis they assist covering the cost of managing the facilities and services on offer above and beyond rental payments. This seems to replicate the meaning of 'rent' in the RTA, which is defined as 'the amount paid to a caravan park owner by a resident to occupy a site and use facilities and services'. The TUV believes park owners engaged in this practice are claiming the same service via two separate considerations levied on residents. This practice is clearly unfair and we recommend banning deferred management fees.

Option 3 may prohibit these fees due to the effect of s 51(1) of the RTA. Alternatively s 51(1) could be replicated in Part 4 of the RTA. If such a fee may be payable, the tribunal should be required to take this into account when determining whether a rent increase is excessive. A preferable means of prohibiting deferred management fees is to limit permissible consideration to rent, bond and fees and amounts prescribed in the regulations. Such provisions exist in both South Australian and New South Wales Acts.

Sale of Dwelling and Site Rental

Many of the site lease and van purchase agreements we have seen are legally complex and refer to associated instruments. Some agreements restrict the ability to sell vans in the future. It is unlikely that many residents fully understand the basis of such contracts. The TUV does not believe any of the options provided by the Options Paper offer adequate resolution of the issues raised relating to resale arrangements.

Obtaining independent legal advice about these agreements is desirable; however the cost is prohibitive for many potential residents. Residents' interests would be advanced if they could access free legal advice. We recommend that CAV should provide additional funding to specialist community legal centres to provide this service.

While Option 3 requires tenancy agreements to be in a prescribed form, we recommend the development of model contracts for sale of dwelling and site rental of sites be incorporated in revised caravan park provisions rather than transferring the regulation of caravan parks to Part 2 of the Act. Model contracts should include pre-disclosure requirements, including a require to disclose any

issues relating to the site such as subsidence. Deviation from the model contract should be discouraged, and the onus should be on the operator to justify the inclusion of any additional terms. A “cooling off” period should also be built into the contractual process to enable residents to avail themselves of independent, free legal advice before the agreement becomes binding. During this cooling off period, a park operator should be restrained from offering the van and site to other potential residents.

In order to provide certainty for both occupancy types, we also recommend dwelling and site rental agreements be prescribed by the revised caravan park provisions.

Dispute management

The Options Paper provides no detailed options addressing issues relating to dispute resolution and relies on advocacy and mediation services already provided by CAV and VCAT. These existing services should be made more easily accessible and maintained as fee-free services. The TUV is aware of numerous cases of residents who decline to seek dispute resolution via these services due to lack of familiarity and fears of victimisation by park owners. Given the communal nature of caravan parks, group disputes are common. For example, park owners commonly issue notice or rent increases to groups of residents. However, group proceedings are difficult due to the necessity for each resident wishing to challenge to issue a separate request to CAV and then separate application to VCAT. We believe this process needs to be streamlined. The problem could be overcome if a representative body (like the TUV) could issue one application on behalf of multiple residents.

In addition to legislative amendments to provide greater security of tenure, a key way to reduce the level of disputes is to increase the magnitude and quality of information and assistance provided to both park operators and residents. Providing additional resources for advocacy services to ensure that vulnerable residents are better able to exercise statutory rights is also a crucial element to ensuring access to dispute management processes. This should include increased outreach activity to caravan parks.

Rental increases

Given the combination of tight supply and increasing rents, caravan park residents should be protected from excessive rent increases and provided with

greater certainty in relation to the timing of rent increases and the affordability of future rents.

While Option 1 through to Option 4 retain the Act's current process for excessive increases, the TUV believes these provide inadequate protection and fail to ensure rent increases remain affordable. Legislation in other jurisdictions provides far greater protection against excessive rent increases. In Queensland, when considering a challenge to a rent increase, the tribunal has the ability to consider CPI and whether the increase is fair and equitable. In NSW, the tribunal has the power to consider the conduct of both parties, thus giving the tribunal the power to consider whether rent increases are retaliatory etc.

We recommend the act be amended to limit rent increases to one every 12 months and restrict rent increases to 120% of CPI for the previous 12 months. Landlords would then be required to apply to VCAT for permission to increase the rent beyond this specified level. Residents who believe an increase is excessive would also be permitted to apply to VCAT for a review. VCAT could then determine whether the rent was excessive, having regard to:

- the hardship that the tenant will suffer as a consequence of any increase relative to the landlord
- the length of the tenancy
- any other matter VCAT considers relevant.

The Victorian Government should also monitor rents, rent increases and associated charges in non-mainstream forms of accommodation, such as caravan parks and rooming houses, to capture accurate data about rent levels in these sub-markets.

Maintenance

Owner/renters are often confused about who repairs the dwelling. Because they are the owners this falls on them. However, there are implied warranties and conditions in the Fair Trading Act 1999 that may apply (where the dwelling is new built) – any warranties that apply should be made clear in a prescribed form of lease.

We have represented a number of caravan park residents in disputes on problems related to the caravan site. In particular, we have witnessed many incidents of damage caused to dwellings by subsidence of the site. We recommend clarifying section 174 to clarify park owners responsibility for issues relating to the site.

Compliance and enforcement

Currently, the Act does not provide sufficient tools for compliance and enforcement because the penalties prescribed are not sufficient to deter opportunistic or exploitative conduct by park owners. Low penalties also diminish the incentive for complainants to consider and persist with the prosecution process and for regulators to initiate prosecutions. We recommend increasing penalties to align them with interstate caravan park and residential park legislation, with particular reference to relevant legislation in Queensland, South Australia and Western Australia. Clarifying the definition of services in the Fair Trading Act would also ensure all agreements are covered by unfair terms provisions of that Act, rather than being limited to those relating to trade and commerce only.

Park closures

The closure of parks causes severe financial and personal detriment to long term caravan park residents. Residents displaced by park closure need financial and other support to assist them with the costs of moving. We also support the establishment of strong protocols between State and Local government and the community service sector be established to guide the interaction with park residents in the event of a caravan park closure as set out in Option 1. To ensure the social planning response enacted by State and Local government agencies, we recommend amending the caravan park provisions to require park owners to notify agencies once residents have been informed of a park closure. We recommend establishing a fund dedicated to defraying the costs of securing new accommodation for needy residents because of park closure.

We welcome any further opportunity to discuss caravan parks tenancy policy reform. If you have any further questions or would like to arrange a meeting to discuss these issues please contact our Policy and Liaison Worker, Toby Archer, on 03 9411 1413 or 0417 138 471.

Yours sincerely,



Mark O'Brien

Chief Executive Officer

Tenants Union of Victoria

Table 2: Reform Options for Caravan Parks

	OWNER RESIDENT		RENTER RESIDENT	
	Moveable Dwelling	Fixed Dwelling	Moveable Dwelling	Fixed Dwelling
Security of Tenure	> Repeal s.314 [120 day Notice to Vacate]	> Repeal s.314 [120 day Notice to Vacate]	> Repeal s.314 [120 day Notice to Vacate]	> Repeal s.314 [120 day Notice to Vacate]
	> Remove resident definition (b) (ii) and replace with “principal place of residence” test	> Remove resident definition (b) (ii) and replace with “principal place of residence” test	> Remove resident definition (b) (ii) and replace with “principal place of residence” test	> Remove resident definition (b) (ii) and replace with “principal place of residence” test
	> Stronger protection against retaliatory eviction e.g. s 88 SA	> Stronger protection against retaliatory eviction e.g. s 88 SA	> Stronger protection against retaliatory eviction e.g. s 88 SA	> Stronger protection against retaliatory eviction e.g. s 88 SA
Sale of Dwelling	> Establish model contract for sale of dwelling	> Establish model contract for sale of dwelling		
	> Proscribe exclusive dealing by CPO	> Proscribe exclusive dealing by CPO		
Rental of Dwelling			> Prescribe rental agreement	> Prescribe rental agreement
Rental of Site	> Prescribe rental agreement			
	> Cooling off period [site and sale of dwelling]	> Cooling off period [site and sale of dwelling]	> Cooling off period [site and rental of dwelling]	> Cooling off period [site and rental of dwelling]
	> Pre-disclosure requirements incl. problems with site eg. settlement	> Pre-disclosure requirements incl. problems with site eg. settlement	> Pre-disclosure requirements incl. problems with site eg. settlement	> Pre-disclosure requirements incl. problems with site eg. settlement
Transfers	> Amend s 195 to clarify that remaining duration of residency right is transferable	> Amend s 195 to clarify that remaining duration of residency right is transferable	> Amend s 195 to clarify that remaining duration of residency right is transferable	> Amend s 195 to clarify that remaining duration of residency right is transferable
	> Require CPO refusing consent to provide notice of the decision and reasons e.g. s 49 QLD	> Require CPO refusing consent to provide notice of the decision and reasons e.g. s 49 QLD	> Require CPO refusing consent to provide notice of the decision and reasons e.g. s 49 QLD	> Require CPO refusing consent to provide notice of the decision and reasons e.g. s 49 QLD
Rent	> Enable VACT to considers other relevant matters under s.155	> Enable VACT to considers other relevant matters under s.155	> Enable VACT to considers other relevant matters under s.155	> Enable VACT to considers other relevant matters under s.155
	> Limit additional site rent on self contained dwellings	> Limit additional site rent on self contained dwellings	> Limit additional site rent on self contained dwellings	> Limit additional site rent on self contained dwellings
			> Limit additional hiring charge on self contained dwellings	> Limit additional hiring charge on self contained dwellings
Other Fees	> Proscribe deferred management fees			
Maintenance	> Clarify s.174. Resident not responsible for site problems e.g. settlement	> Clarify s.174. Resident not responsible for site problems e.g. settlement	> Clarify s.174. Resident not responsible for site/van problems. Compare s.180	> Clarify s.174. Resident not responsible for site/van problems. Compare s.180
Removal of Dwelling		> S.359 not to apply		
Dispute Resolution	> Establish right of representative action by third parties	> Establish right of representative action by third parties	> Establish right of representative action by third parties	> Establish right of representative action by third parties
Park Rules	> Establish model park rules			
Compliance & Enforcement	> Increase penalties to align them with interstate res. parks legislation e.g. QLD, SA, WA.	> Increase penalties to align them with interstate res. parks legislation e.g. QLD, SA, WA.	> Increase penalties to align them with interstate res. parks legislation e.g. QLD, SA, WA.	> Increase penalties to align them with interstate res. parks legislation e.g. QLD, SA, WA.
	> Clarify definition of services in FTA to ensure that all agreements are covered incl. unfair terms.	> Clarify definition of services in FTA to ensure that all agreements are covered incl. unfair terms.	> Clarify definition of services in FTA to ensure that all agreements are covered incl. unfair terms.	> Clarify definition of services in FTA to ensure that all agreements are covered incl. unfair terms.
Anti-avoidance	> Introduce offence for evading the operation of the Act. e.g. QLD, SA, WA, NSW.	> Introduce offence for evading the operation of the Act. e.g. QLD, SA, WA, NSW.	> Introduce offence for evading the operation of the Act. e.g. QLD, SA, WA, NSW.	> Introduce offence for evading the operation of the Act. e.g. QLD, SA, WA, NSW.

References: *Manufactured Homes (Residential Parks) Act 2003 (QLD)*
Residential Parks Act 2007 (SA)
Residential Parks (Long-stay Tenants) Act 2006 (WA)
Residential Parks Act 1998 (NSW)