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*Options paper:
Tenancy policy framework
for residential parks*
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Consumer Affairs
Victoria



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“ Minister’s message ”



I have pleasure in launching this *Options Paper: Tenancy Policy Framework for Residential Parks*.

With the recent release of our social policy statement *A Fairer Victoria – Standing Together Through Tough Times 2009*, the Government reaffirmed its commitment to ensuring that Victorians have an adequate supply of a range of affordable,

secure housing - housing that is appropriate to need, that is well located and that promotes social inclusion.

As part of this commitment, the Premier announced in the 2009 Annual Statement of Government Intentions, that, following an extensive review of the area, the Government would develop regulations to protect residents of residential parks.

The release of this Options Paper provides an opportunity for park operators, residents, advocacy groups and other interested stakeholders to contribute to improving the legal framework for tenancy arrangements in residential parks.

This Options Paper seeks broad community input to ensure that future regulatory reform will result in a balanced approach that will provide protection for the tenancy rights and interests of residents and that will recognise the legitimate interests of park owners and operators to develop and sustain efficient and effective business operations.

I look forward to your contributions.

A handwritten signature in black ink, consisting of a stylized, cursive name followed by a long horizontal line extending to the right.

**HON TONY ROBINSON MP
MINISTER FOR CONSUMER AFFAIRS**

“ *Director’s foreword* ”



Over the past 10 years, residential parks have emerged as an important form of long term accommodation, particularly for retirees and pensioners.

With these new forms of accommodation, issues arise which may not be adequately addressed by the existing legislative framework.

Over the past 12 months, Consumer Affairs Victoria (CAV) has been conducting policy research and consultation to better understand issues facing the residential parks sector and identify any gaps in the existing regulation. We are pleased to present to you one of the key products of this work.

This Options Paper aims to generate discussion contributing to CAV’s review of the tenancy regulation of residential parks. The result we hope to achieve is a tenancy policy framework in which residents have appropriate tenancy protections while the commercial viability of the residential parks sector is maintained. We look forward to receiving your submissions and hearing from the many voices in the sector.

A handwritten signature in cursive script that reads "Claire Noone".

Dr Claire Noone
Director

“ Introduction ”

In recent years, Victoria has witnessed the emergence of unregistered moveable dwelling accommodation (UMD) located in communal park environments (as opposed to registered moveable dwellings, such as caravans, that may be registered as a vehicle). These parks have become commonly known as “residential parks”.

Unlike traditional caravan parks, the new park offers a more permanent style of accommodation where the resident owns the UMD and rents a site within the park on which to locate their dwelling. It should be noted that UMD’s might also be placed in caravan parks alongside traditional caravan and short term or holiday accommodation.

In July 2008, Consumer Affairs Victoria (CAV) engaged PricewaterhouseCoopers (PwC) to undertake a study of the tenancy policy framework applying to residential parks and to develop a set of viable options for the future regulation of these new ‘owner-renter’ arrangements. The study was commissioned in response to concerns expressed by stakeholders about a range of consumer protection issues for owners of UMD’s renting a site in residential and caravan parks.

The purpose of this Options Paper is to provide stakeholders with the opportunity to consider a range of legislative and non-legislative options regarding future tenancy arrangements between owners of UMD’s and owners of residential and caravan parks. The options aim to balance the rights of both residents and park owners and set out the obligations appropriate to the needs of the industry to conduct efficient businesses.

This Paper sets out a series of options to address the following issues:

- security of tenure
- internal dispute resolution
- resident participation in decision making
- contractual issues relating to resale and disclosure conditions
- deferred management fees
- resale arrangements
- park rules
- rent increases
- capital replacement
- energy charges
- information disclosure, and
- repairs and maintenance.

Scope of the Options Paper

Each of the options in this paper focus upon “owner-renters” with the following characteristics:

- 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 characterised by predominantly long-term residents who own their own dwelling but rent the site upon which it is located. Residency in parks is often offered as a package that will include an agreement on land rental, access to park services and purchase of a UMD. UMD's are typically self-contained dwellings built directly onto a composite platform chassis that in turn is supported off ground by stumps or footings. UMD's may range in price from \$80,000 to more than \$200,000.

Caravan parks are generally characterised by short-term residents who rent both the site and the dwelling. Caravan parks also cater for holidaymakers, transient workers and in some instances, persons requiring short-term emergency accommodation. The options presented in this paper do not affect caravan park ‘renter – renter’ arrangements.

Currently, tenancy arrangements for both traditional caravan park accommodation and residential park style accommodation are regulated under Part 4 of the *Residential Tenancies Act 1997* (RTA). Existing provisions of the RTA do not distinguish between these types of residential accommodation arrangements nor do they acknowledge the investment that an owner-renter has made in their dwelling and the costs entailed in relocating a UMD on termination of a tenancy.

If you would like to respond to this Option Paper, written submissions are due by 10 July 2009. Please send your submissions to:

BY post: “Residential parks”
Consumer Affairs Victoria
GPO Box 123
Melbourne 3001

or

BY email: resparks@justice.vic.gov.au

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“Options for regulating owner-renter arrangements in the future”

Option 1: Amend and tighten Part 4 of the *Residential Tenancies Act 1997* (RTA)

Issue	How issues are addressed by Option 1
Security of tenure	<p>Remove or revise the application of the 120 day notice to vacate without reason to owner-renter arrangements under Part 4 of the RTA.</p> <p>Additional information requirements would be inserted within the RTA to provide that before a person enters into a written tenancy agreement the park owner must give written information on:</p> <ul style="list-style-type: none"> i) the length of tenure that the park owner has to the land upon which the park is located ii) the maximum length of tenure that the park owner is offering, and iii) tenure under a periodic tenancy only existing for the term of the rental payment, and iv) that the park owner has the right to serve a ‘notice to vacate’ at the end of each tenure period. The park owner will be required to issue a ‘notice to vacate’ whether a tenancy is for a fixed term or periodic.
Deferred management fees	<p>Additional information requirements could also be inserted within the RTA to provide that a park owner must provide written information on any deferred management fees that may be imposed.</p> <p>In addition, existing sections 183(1)(d) and 197 of the RTA provide some protection for residents. Section 183(1)(d) requires a park owner to inform a resident of the scale of commission which applies to the sale of a caravan¹ by a caravan park owner. Section 197 prohibits a park owner from charging a fee as a condition of or in consideration of the park owner consenting to a resident transferring the residency right.</p> <p>Section 144A also provides for residents to challenge harsh and unconscionable terms in an agreement with a park owner.</p>

¹ “Caravan” is defined in s 3 of the RTA to mean:

- a moveable dwelling, or
- an immovable dwelling situated in a caravan park

Resale arrangements	<p>The Act would be amended to require a park owner to give written information to the resident on what, if any, restrictions and conditions will apply on resale.</p> <p>If a resident sells an unregistered movable dwelling, section 195 allows the resident to transfer the residency right to the purchaser of the dwelling with the consent of the park owner. The park owner must not unreasonably withhold consent to a transfer. Section 197 prohibits a park owner from charging a fee as a condition of or in consideration of the park owner consenting to a resident transferring the residency right. Section 198 prohibits a park owner from obstructing or hindering the sale of a caravan owned by a resident. No change is proposed to sections 195, 197 and 198.</p>
Dispute resolution	<p>Consumer advocacy and mediation services are already provided by CAV and VCAT.</p>
Park rules	<p>Section 187 allows residents to contest rules that they consider unfair.</p> <p>Additional information will be inserted into the Act: that the park owner must give the resident information before they enter into an agreement concerning any restrictions about the use of the premises and facilities including limitations that may apply to having someone else live in the premises; having visitors, including overnight or short-stay guests; or having pets.</p> <p>Any subsequent changes made to the park rules by the owner considered unfair by the residents could be appealed to VCAT under the unfair contract terms provisions of the Fair Trading Act.</p>
Rental increases	<p>Section 153-154 provides for residents to contest rents considered excessive before the Director of Consumer Affairs Victoria or VCAT. No change is proposed.</p>
Capital replacement	<p>Section 178 requires the park owner to keep common areas, gardens, roadways, paths and recreation areas clean and in a safe condition. Section 179 requires the park owner to maintain communal areas of the park. Regulation 42 of the Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and Standards) Regulations 1999 require a caravan park owner ensure buildings and facilities in a park are maintained in a condition suitable for use by residents and occupiers of the park. No change is proposed.</p>
Utility charges	<p>Section 166 prevents a park owner from seeking overpayment of utility charges. There are also regulations, Orders-in-Council and codes and guidelines established under the Victorian Electricity and Gas Acts that regulate utility charges. No change is proposed.</p>
Information disclosure	<p>Additional information requirements would be inserted in the RTA and may include a list of minimum requirements that park rules must address.</p>

Repairs and maintenance	Regulation 40 of the Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 1999 requires an owner of an unregistered movable dwelling and/or annexe to maintain the dwelling or annexe in a good state of repair and in a clean, sanitary and hygienic condition. No change is proposed.
Park closures	Establish protocols to address park closures or ownership transfers that result in park closures. These protocols could outline the processes for working with residents affected by the park closures such as notification procedures to Local and State government authorities, the development of an impact analysis and the implementation of a local working group consisting of representatives from CAV, Department of Human Services, local government, crisis and transitional accommodation providers and local tenant services.

The key advantage of Option 1 - tightening the provisions of the RTA is that:

- it has minimal impact on the industry
- park owners continue to have access to the various notices to vacate for specified reasons
- park owners would need to specify a reason for a notice to vacate if the 120 day notice was removed, residents could contest the grounds of the issuance of the notice
- the additional information requirements specified would provide more information to residents about the accommodation choices they are making and enable better and more informed decisions, and
- ensure that there is a level of consistency in the information that park owners will need to provide to residents.

The additional information requirements specified would not have a significant impact upon park owners and should be relatively inexpensive to produce.

A key disadvantage of Option 1 is that residents could still be evicted because:

- the owner could still terminate the tenancy at the end of each rental period where the resident is subject to a verbal periodic tenancy agreement, or
- the owner has issued a notice with reason, which the resident would then be required to contest at VCAT while also attempting to organise alternative accommodation in the event that the appeal fails.

This option also offers no additional security of tenure to residents where park ownership changes and new agreements are entered into with the new park owner. Residents may also be required to vacate the site if the new park owner wishes to change the use of the park land.

However, the enhanced information disclosure requirements set out under this option should assist residents make better informed choices about their accommodation.

A fundamental problem associated with park closures is the need to find suitable alternative accommodation and to manage the re-location of a large group of individuals. This option proposes that resident, government agency and industry cooperation will be needed to coordinate a response to a park closing. This option supports the development of protocols that outline the processes for working with residents affected by the park closures. If necessary, protocols could establish procedures that enabled government and/or residents to recoup the costs associated with relocation.

Box 1: Questions to stakeholders on Option 1

1. Does the option provide a suitable balance between preserving the property rights of the park owner and providing security of tenure to residents?
2. What other information requirements (if any) should be placed upon park owners? Why?
3. Are the protocols suggested by this option sufficient to address park closures?

Option 2: Require long term tenancy agreements and tighten provisions under Part 4 of the *Residential Tenancies Act 1997*

Issue	How issues are addressed by Option 2
Security of tenure	<p>Require park owners to enter into a formal lease agreement with long term owner-renters. The obligation to enter into a lease could also require that the lease be of certain minimum length (eg between one to five years). There would also be a requirement to register the lease against the title of the parkland where the term is 15 years or more.</p> <p>An appropriate form of agreement for owner-renter arrangements in residential parks could be developed and prescribed.</p> <p>Park owners to be required to allow prospective tenants 10 business days to review and gain legal advice on the lease.</p> <p>Additional information requirements would be inserted within the RTA to include that before the resident enters into a written tenancy agreement the park owner must give written information on:</p> <ul style="list-style-type: none"> • the length of tenure that the park owner has to the land upon which the park is located • the maximum length of tenure that the park owner is offering, and • The park owner will be required to issue an appropriate ‘notice to vacate’ even if tenancy is periodic. <p>The 120 day notice to vacate without reason would be retained but the Act will be amended to provide that it could not be issued until after the specified termination date of any lease.</p>
Deferred management fees	<p>Additional information requirements could also be inserted within the RTA to provide that a park owner must provide written information on any deferred management fees that may be imposed.</p> <p>In addition, existing sections 183(1)(d) and 197 of the RTA provide some protection for residents. Section 183(1)(d) requires a park owner to inform a resident of the scale of commission which applies to the sale of a caravan² by a caravan park owner. Section 197 may also apply as it prohibits a park owner from charging a fee as a condition of or in consideration of the park owner consenting to a resident transferring the residency right.</p> <p>Section 144A also provides for residents to challenge harsh and unconscionable terms in an agreement with a park owner.</p>

² “Caravan” is defined in s 3 of the RTA to mean:

- a moveable dwelling, or
- an immovable dwelling situated in a caravan park

Resale arrangements	<p>The Act would be amended to require a park owner to give written information to the resident on what, if any, restrictions and conditions will apply on resale.</p> <p>If a resident sells an unregistered movable dwelling, section 195 allows the resident to transfer the residency right to the purchaser of the dwelling with the consent of the park owner. The park owner must not unreasonably withhold consent to a transfer. Section 197 prohibits a park owner from charging a fee as a condition of or in consideration of the park owner consenting to a resident transferring the residency right. Section 198 prohibits a park owner from obstructing or hindering the sale of a caravan owned by a resident. No change is proposed to sections 195, 197 and 198.</p>
Dispute resolution	<p>Consumer advocacy and mediation services are already provided by CAV and VCAT.</p>
Park rules	<p>Amend the Act to incorporate park rules as terms of each lease agreement.</p> <p>Section 187 currently allows residents to contest rules that they consider unfair.</p>
Rental increases	<p>Rental increases should be addressed as a standard term in the written lease agreement and could be included in new information disclosure requirements.</p> <p>Sections 153-154 provide for residents to contest rents considered excessive before the Director of Consumer Affairs Victoria or VCAT. No change proposed.</p>
Capital replacement	<p>Section 178 requires the park owner to keep common areas, gardens, roadways, paths and recreation areas clean and in a safe condition. Section 179 requires the park owner to maintain communal areas of the park. Regulation 42 of the Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 1999 require a caravan park owner ensure buildings and facilities in a park are maintained in a condition suitable for use by residents and occupiers of the park. No change is proposed.</p>
Utility charges	<p>Responsibility for utility charges will be a standard term in the written lease agreement. Section 166 prevents a park owner from seeking overpayment of utility charges. There are also regulations, Orders-in-Council and codes and guidelines established under the Victorian Electricity and Gas Acts that regulate utility charges.</p>
Information disclosure	<p>Additional information requirements would be inserted in the RTA and may include a list of minimum requirements that park rules must address.</p>

Repairs and maintenance	Responsibility for repairs and maintenance can be spelt out in the written lease agreement. Currently, Regulation 40 of the Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 1999 requires an owner of an unregistered movable dwelling and/or annexe to maintain the dwelling or annexe in a good state of repair and in a clean, sanitary and hygienic condition.
Park closures	<p>Park owners or purchasers intending to close the park would need to buy out the remaining terms of any leases. Registering the lease against the title of the park would provide additional protection to residents.</p> <p>Protocols would be developed to address park closures or ownership transfers that result in park closures. These protocols could outline the processes for working with residents affected by the park closures such as notification procedures to Local and State Government authorities, the development of an impact analysis and the implementation of a local working group consisting of representatives from CAV, Department of Human Services, local government, crisis and transitional accommodation providers and local tenant services.</p>

The second option sets out a requirement that park owners enter into a formal lease agreement with long term owner-renters. A requirement to enter into a long term agreement could be included within section 4 of the RTA by requiring the owner to enter into a written agreement with a resident if that resident intends to reside on the land for a prescribed minimum length of time (more than three years). Part 4 could also specify certain minimum terms that a lease should contain.

Other features of this option would include:

- a requirement that a park owner explain the terms of the lease
- a requirement that park owners allow prospective residents 20 working days to review the lease and obtain independent legal advice
- a minimum of five business days cooling off period after the lease has been signed.

Additional information requirements would be inserted in the RTA to provide that before the resident enters into a written tenancy agreement the park owner must give written information on:

- the length of tenure that the park owner has to the land upon which the park is located
- the maximum length of tenure that the park owner is offering
- deferred management fees (if any)
- resale arrangements and conditions
- the park owner's right under a periodic tenancy to serve a 'notice to vacate' at the end of each rental period, and
- the park rules.

The key advantage of requiring written leases is that it would provide improved security of tenure to the resident. Supported by enhanced information requirements, residents would be in a position to make better informed decisions and be empowered once in the park to exercise their rights under the RTA. It would also protect the tenure security that residents have if a change of park ownership occurs as the new owner would need to recognise any existing lease over the land.

Establishing long term leases that may be registered with the Titles Office may also address the issues surrounding park closures and ownership transfers. With a secure tenure to an identified plot of land established through a long term lease, a new owner of the park who intended to close the park, would need to negotiate with the residents to buy out the remainder of the term of the lease. In effect, the need to purchase the remainder of the lease would provide residents with a form of compensation for having to relocate.

However, as noted under park closures, protocols between government departments, residents and the industry would still be required to manage and coordinate a response to a park closing.

Box 2: Questions to stakeholders on Option 2

1. Would long term leases resolve the issue of security of tenure so that residents will feel empowered to exercise their rights under the RTA?
2. What would be the effect on the industry if park owners were required to enter into long term leases with each of their long term owner-renters?
3. Should a standard form of lease agreement be set out in the legislation?
4. If a standard form lease agreement is developed, what minimum terms could be specified in the agreement?
5. Should the minimum length of an agreement be specified in the legislation? If so, what should this be?

Option 3: Transfer regulation to Part 2 of the *Residential Tenancies Act 1997*

Issue	How issues are addressed by Option 3
Security of tenure	<p>Part 2 of the RTA requires tenancy agreements to be in a prescribed standard form. An appropriate form of agreement for owner–renter arrangements in residential parks could be developed and prescribed.</p> <p>Section 6 of the RTA will require amendment to enable Part 2 to apply to lease agreements (in the case of residential parks) for a term in excess of five years.</p>
Deferred management fees	<p>Would require that provisions similar to sections 183 (1) (d), 144A and 197 of Part 4 are reflected in Part 2 of the RTA.</p>
Resale arrangements	<p>Part 2 Division 7 “Assignment and sub-letting by a tenant” could be amended to cater for owner – renter arrangements. Would require that provisions similar to sections 195, 197 and 198 of Part 4 of the RTA are reflected in Part 2 of the RTA.</p>
Dispute resolution	<p>Consumer advocacy and mediation services are already provided by CAV and VCAT.</p>
Park rules	<p>Would require that a provision similar to section 187 of Part 4 of the RTA is reflected in Part 2 of the RTA.</p>
Rental increases	<p>Part 2 of the RTA has provisions for contesting rental increases.</p>
Capital replacement	<p>Part 2 of the RTA contains provisions that place obligations on the landlord and renter for the maintenance of common property. A review of these provisions would be required to ensure that they are sufficient to address the issues concerning long term owner-renters.</p>
Utility charges	<p>There are regulations, Orders-in-council and codes and guidelines established under the Victorian Electricity and Gas Acts that regulate utility charges.</p>
Information disclosure	<p>No additional information requirements would be imposed beyond those already required under Part 2 of the RTA.</p>
Repairs and maintenance	<p>Part 2 of the RTA sets out obligations in relation to repairs and maintenance on the landlord and renter, however these are not designed to cater for owner-renter arrangements. A review of these would be required to ensure that they are sufficient to address the issues concerning long-term owner-renters.</p>
Park closures	<p>Part 2 of the RTA contains no provisions to address park closures. Protocols for park closures consistent with those proposed under Options 1 and 2 could be developed.</p>

This option proposes that the regulation of long term owner-renter arrangements be transferred to Part 2 of the RTA. Part 2 of the RTA sets out the respective rights and obligations of landlords and tenants in the private rental market.

Under this option, the tenancy arrangements between a park owner and an owner-renter would be identical to those that exist in the private rental market. The tenancy agreement would form a legal contract between a park owner and an owner-renter and would cover the amount of rent payable, the length of the tenancy, and other terms and conditions associated with residing on a site within the park.

As under Part 4, agreements entered into under Part 2 can be written or verbal and can be fixed term or periodic. If in writing, the agreement must be in a prescribed standard form.

Currently, Part 2 of the RTA does not cover “owner-renter” arrangements. It is designed to apply where a landlord owns the residential premises that are then let by a tenant for an agreed term. Introducing the ability to regulate owner – renter arrangements in residential parks into Part 2 may unnecessarily complicate the structure of the Act.

It is unlikely that the existing provisions of Part 2 are sufficient to address park closures or security of tenure in the event of a transfer of park ownership. Furthermore, unless they are amended, the information disclosure requirements under Part 2 do not advance upon those set out in Part 4 of the RTA.

Implementation of Option 3 will require an amendment to the definition of a “tenancy agreement” contained in section 3 of the RTA to ensure that owner-renter arrangements can be covered. Currently, Part 2 of the RTA applies to “tenancy agreements” defined as an agreement to let “premises as a residence”. Renting a vacant site within a park on which to place your own UMD may not fall within the existing definition.

Section 6 of the RTA would also require amendment to enable Part 2 of the Act to apply to residential park agreements that are for a term longer than five years.

Box 3: Questions to stakeholders on Option 3

1. Should regulation of general residential tenancies and residential park owner-renter arrangements be consolidated under the same section of the *Residential Tenancies Act 1997*?
2. What benefits or costs would flow from transferring the regulation of owner-renter arrangements to Part 2 of the *Residential Tenancies Act 1997*?
3. If regulation were transferred to Part 2, should a prescribed form agreement specifically for residential park tenancies be developed?
4. What other changes to Part 2 might be necessary?

Option 4: Creation of a new separate Act

Issue	How issues are addressed by Option 4
Security of tenure	<p>The requirement for a park owner to enter into a formal lease agreement with long term owner-renters would be placed into a new Act rather than under Part 4 of the RTA. The obligation to enter into a lease could also require that the lease be of a certain minimum length. There would also be a requirement to register the lease against the title of the parkland where the term is 15 years or greater.</p> <p>The 120 day notice to vacate without reason would be retained within Part 4 of the RTA but would have no application to owner-renters covered by the new Act.</p>
Deferred management fees	<p>Additional information requirements could also be inserted within the new Act to provide that a park owner must provide written information on any deferred management fees that may be imposed.</p> <p>Sections 183 (1) (d), 144A and 197 of Part 4 of the RTA would be replicated in the new Act.</p>
Resale arrangements	<p>The Act would require a park owner to give written information to the resident on what, if any, restrictions and conditions will apply on resale.</p> <p>Sections 195, 197 and 198 of Part 4 of the RTA would be replicated in the new Act.</p>
Dispute resolution	<p>The Act would provide for consumer advocacy and mediation services to be provided by CAV and VCAT.</p>
Park rules	<p>The Act would provide that park rules are incorporated as terms of each lease agreement.</p> <p>Section 187 of Part 4 of the RTA would be replicated in the new Act.</p>
Rental increases	<p>Rental increases should be addressed as a standard term in the written lease agreement and could be included in new information disclosure requirements.</p> <p>Sections 153-154 of Part 4 of the RTA would be replicated in the new Act.</p>
Capital replacement	<p>Sections 178, 179 of Part 4 of the RTA and Regulation 42 of the Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 1999 would be replicated in the new Act.</p>
Utility charges	<p>Responsibility for utility charges will be a standard term in the written lease agreement. Section 166 of Part 4 of the RTA would be replicated in the new Act. There are also regulations, Orders-in-Council and codes and guidelines established under the Victorian Electricity and Gas Acts that regulate utility charges.</p>

Information disclosure	Comprehensive information requirements would be inserted in the new Act. These may include a list of minimum requirements that park rules must address.
Repairs and maintenance	Responsibility for repairs and maintenance can be included in the written lease agreement. Currently, Regulation 40 of the Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 1999 requires an owner of an unregistered movable dwelling and/or annexe to maintain the dwelling or annexe in a good state of repair and in a clean, sanitary and hygienic condition. This provision could be replicated in the new Act.
Park closures	<p>Park owners or purchasers intending to close the park would need to buy out the remaining terms of any leases. Registering the lease against the title of the park would provide additional protection to residents.</p> <p>Protocols would be developed to address park closures or ownership transfers that result in park closures. These protocols could outline the processes for working with residents affected by the park closures such as notification procedures to Local and State Government authorities, the development of an impact analysis and the implementation of a local working group consisting of representatives from CAV, Department of Human Services, local government, crisis and transitional accommodation providers and local tenant services.</p>

Rather than addressing concerns with the tenancy policy framework through the RTA, this option proposes the creation of a separate Act.³ The new Act would establish a customer protection framework for owner-renters in caravan/residential parks. Under this option:

- relevant provisions of the RTA would be replicated in a separate Act and apply to the relationship between park owner and owner-renters
- a definition of owner-renter would distinguish whether the relationship between a park owner and resident was governed by the RTA or the newly created Act. The RTA would still apply to traditional short term or holiday style accommodation in caravan parks;
- the Act would require park owners to enter into a formal lease agreement with long term owner-renters. A standard form agreement or list of minimum requirements should be prescribed

- the information requirements set out under Options 1 and 2 would apply, and
- protocols governing park closures would be developed. The separate Act could also incorporate any relevant provisions of the Fair Trading Act.

Creation of a separate Act to address regulation of ‘owner-renter arrangements in residential parks may be seen as a “user-friendly” option in that relevant regulation will be available in a discrete piece of legislation - rather than as one part of a longer Act, such as the RTA. However, consultation conducted prior to developing this paper did not identify any additional advantage that could not be gained from simply amending the RTA.

³ The approach of establishing a separate Act has been used by several other Australian jurisdictions including NSW, Queensland, Western Australian and most recently South Australia. There appears to be no clear reason why a separate Act was established in these jurisdictions rather than amending the provisions of their existing Residential Tenancies legislation.

The creation of a separate Act, may create a number of disadvantages.

Whether the relationship between a park owner and a resident would be governed by the new Act or by the RTA would hinge on the definition of “owner-renters” used to distinguish which Act applies.

This may create incentives for park owners and the industry in general to develop residential models or arrangements that fall outside the new definition . This may create the need to frequently revisit the definition used to ensure that it still captured the correct class of residents.

It may also create an incentive for park owners to withdraw or reduce supply to certain groups depending upon the relativities of the customer protection frameworks applying. For example, if compliance with the customer protection framework established by the new Act is more onerous and expensive for park owners than that established by the RTA, park owners may choose to reduce the supply of sites for long term owner-renters.

This option also risks inconsistencies developing over time between the customer protection frameworks applying under the RTA and the newly created owner-renter Act. For example, as expectation of the customer protection framework that should apply to residential tenancies evolves, amendments made to the RTA may not be reflected in the new legislation. As a result, owner-renters may experience declining levels of customer protection relative to the customer protections enjoyed by other classes of tenants.

Additional administrative costs could also be incurred in ensuring that the two Acts remain consistent over time.

Box 4: Questions to stakeholders on Option 4

1. What advantages would establishing a separate Act have over amending the existing *Residential Tenancies Act 1997*? What are the disadvantages?
2. If a separate Act is established, what issues should be covered in that legislation?
3. How would a separate Act affect the industry if it were established?
4. How would a separate Act affect the interests of owner-renter residents if it were established?

Option 5: Regulation under the *Retirement Villages Act 1986* (RVA)

Issue	How issues are addressed by Option 5
Security of tenure	<p>There are a number of different contractual arrangements available under the RVA including a long term lease or licence. A cooling off period of three clear business days applies from the signing of any contract.</p> <p>Section 14 of the RVA expressly provides that a contract between a resident and the owner of a retirement village gives rise to a residence right that will bind any successors in title to the owners.</p>
Deferred management fees	<p>Residents of retirement villages are generally required to pay an ingoing contribution (at least a portion of which is refundable). Contracts may require a resident to pay a deferred fee, which can be levied as retention of part of the in-going contribution.</p>
Resale arrangements	<p>Part 5A of the RVA will apply (with any necessary modifications) to a sale by an owner-resident of their UMD. This regulates the rights of the owner-resident and village manager/park owner.</p>
Dispute resolution	<p>The RVA provides for internal dispute resolution, complaint handling mechanisms and proceedings before VCAT.</p>
Park rules	<p>Similar requirements to those under section 37 regulating retirement village by-laws would apply. Park Rules could be changed by special resolution, requiring a minimum of three quarters of the residents to vote in favour of the change.</p>
Rental increases	<p>Rents are not formally charged within a retirement village. However there are a range of other charges that may be levied including an annual maintenance charge.</p>
Capital replacement	<p>Recurrent charges are payable by residents for the upkeep of the village and, subject to certain provisions village operators are able to levy special fees for capital replacement. These provisions could be adapted to apply to owner-renters.</p>
Utility charges	<p>Residents are responsible for payment of all separately metered utility charges. The RVA does not address these charges. They are generally covered in a resident's contract with the owner. Relevant energy legislation and regulations would also apply.</p>

Information disclosure	<p>Information disclosure requirements under the RVA would be extended to owner-renters in residential parks. At least 21 days prior to entering into a contract for a residence in a retirement village, the owner of the residence or the owner’s agent must provide a copy of that contract. The village operator is required to provide a prospective resident with other relevant documents, including:</p> <ol style="list-style-type: none"> 1. any contract relating to the provision of services by the operator 2. any other agreement about payment of an ingoing contribution or a recurring charge for goods and services 3. a disclosure statement including any encumbrances or agreements that have an impact on the rights of the resident 4. list of important information for residents, and 5. rules and by-laws of the village and agreements to abide by them.
Repairs and maintenance	<p>Recurrent charges are payable by residents for the upkeep of the village. These should be detailed in the contract/lease agreement.</p>
Park closures	<p>Section 9 of the RVA provides that an owner who proposes using land as a retirement village must give notice of the intended use to the Registrar of Titles (in a prescribed form) before inviting potential residents to enter into contracts.</p> <p>Section 39 provides that the notice under s 9 cannot be cancelled except by:</p> <ol style="list-style-type: none"> a) agreement in writing of all the residents of the village; or b) the notice is declared cancelled by the Director of CAV. This can only occur after an application to the Director by the owner. The RVA requires that a copy of that application be served on all residents of the village and there is a 60 day period within which they may make submissions to CAV. The Director may approve or decline the application.

The RVA has the advantage that it has a comprehensive customer protection framework established that would address many of the key issues that have been raised in this study. For example, the RVA provides security of tenure because it enables the resident to purchase a lease or licence to reside in the village for anything ranging from 49 years to 199 years. It also addresses issues associated with ownership transfers and village closures.

However, a key disadvantage with the RVA is that it may not provide sufficient coverage and protection for all owner-renters. The RVA only applies to residents who are over 55 years old, retired and are living or proposing to live in a retirement village. There are parks that currently provide long term owner-renter unregistered movable dwelling accommodation to those less than 55 years of age. There is also the potential for these types of parks to be marketed to other types of younger residents such as first home buyers.

Thus, applying the RVA to parks only servicing retirees over 55 years of age with others remaining under Part 4 of the RVA may result in one class of customer having higher standards of customer protection.

Application of the RVA to parks may also create a preference amongst some park owners for those under 55 years of age and not retired. In other words, park owners could withdraw the supply of long term owner-renter unregistered movable dwelling accommodation to the over 55 year age group to avoid having to comply with the customer protections created by the RVA. Consideration could be given to applying RVA protections to long-term accommodation without any age limitation.

Another issue is whether an application of the RVA could lead to the withdrawal of supply of long-term unregistered movable dwelling owner-renter arrangements in parks. Many stakeholders have observed that the economics of the residential parks model relies upon it being able to access the cost advantages generated by being under the RTA. Significantly, tenants subject to the *Residential Tenancies Act 1997* are eligible to access the Commonwealth Government's rental assistance scheme. However, some stakeholders have asserted that Commonwealth Rent Assistance is not, available to residents of retirement villages regulated under the RVA.

These are a number of different contractual arrangements that are offered by retirement villages:

- strata title
- long-term lease or licence (granted as payment of ongoing contributions – no periodic rent)
- company title
- unit trust
- periodic tenancy (agreement operate from rental period to rental period).

It is only where the arrangement entails payment of periodic rent that Commonwealth Rent Assistance could be available to residents. Residents will also need to meet any other Commonwealths eligibility requirements.

Box 5: Questions to stakeholders on Option 5

1. Would regulation under the *Retirement Villages Act 1987* resolve issues relating to security of tenure?
2. Are there any protections in the *Retirement Villages Act 1986* that are not covered by existing legislation or in the other options proposed in this report?
3. If regulation of owner-renter arrangements in residential parks is transferred to the *Retirement Villages Act 1986*, should the provisions of the Act apply without reference to an age limitation?
4. What is the likely impact on the industry of applying the *Retirement Villages Act 1986*?
5. What would be the impact on residents if they were unable to access rent assistance payments?

Box 6: Questions to stakeholders on Option 6

1. Are there any other options to address the issues raised in this paper?

Next Steps

All submissions received will be acknowledged. After close of the consultation period Government will consider the appropriate course of action taking into account stakeholder feedback on this Options Paper.

Notes

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