

**NSW Office of Fair Trading**  
**Review of Residential Parks Act 1998**  
**Shelter NSW submission**

**August 2004**

## SHELTER NSW

Shelter NSW is a community-based, statewide, peak housing body, which aims to advance the housing interests of low-income and disadvantaged people in New South Wales. It is also part of a national network of Shelter organisations in each State and Territory, and is a constituent member of National Shelter.

Shelter NSW was established in 1975, and was involved in advocacy and campaigning in support of public housing and in the development of community-based alternatives like housing co-operatives (not lending agencies, but groups of people interested in co-operative housing living and management).

Shelter's vision is to work for a just and equitable housing system, where housing for all is a right, not a privilege.

Shelter's role is to:

- Promote a co-ordinated response within the community sector to housing issues affecting housing low-income and disadvantaged people;
- Work with and influence government and relevant community sector organisations so that they develop housing policies and programs which meet the needs of low-income and disadvantaged people;
- Increase public awareness of housing issues and support for adequate and sustainable responses;
- Research and develop responses to housing issues;
- Provide quality information, assistance and support to the community sector, members and other stakeholders.

Shelter has 117 organisational members and 41 individual members. Organisational membership includes specific-interest peak groups (e.g., tenants, youth, community housing, etc.), a wide range of housing providers, public and private tenant groups, local government councils, regional housing bodies, community services agencies, etc.

## **INTRODUCTION**

### **RESIDENTIAL PARKS ACT REVIEW**

This is the first major review of the Residential Parks Act since it was introduced in 1998. It is inevitable that legislative changes will need to be made in the light of experience. Some of the changes we will discuss in the course of this submission are changes we have felt necessary from the time the legislation was introduced, others have arisen from experience with the operations of the legislation in practice.

This review also takes place against the backdrop of significant change in the nature of the industry, with the development of a range of new problems, or problems at least exacerbated by those changes. Thus, for example, in coastal regions in particular, steep increases in land values have led to changes in the nature of the industry. In a number of cases owners have capitalised their assets by selling parks to developers, with consequent changes of use; or they have sought to capitalise in other ways, by changing the focus of the parks from long-term residential use to provision of cabins from the flourishing tourism market. The consequent termination of permanent residencies on a large scale has highlighted the inherent insecurity of this form of housing under the present regime.

It should be noted that residents of parks face particular constrictions. In the case of people renting onsite accommodation, these are often people who would otherwise be homeless, people on very low or statutory incomes, and people with a range of disabilities. Numbers of these may have been referred to the parks by various government departments (like Housing, Health, Ageing Disability and Home Care, and Corrective Services) or by community agencies like SAAP services and so on. Characteristically, these are people who cannot find stable and affordable housing anywhere in the system, and who, for lack of adequate legal protection, often have minimal security and stability in residential parks.

The other major group of people living in residential parks is people choosing what they regard as an appealing and affordable lifestyle, but who often have limited or relatively limited means. Characteristically, these are people who have retired or are on the cusp of retirement, and who invest their savings and/or superannuation in purchase of a manufactured home which they then locate on a park. These people are often on limited or statutory incomes, and are likely to be significantly affected by any rental increase – this is surely one of the primary reasons why disputes over rental increases are much more frequent in this sector than in other.

The other major problem faced by this group is divided ownership, with one party owning the land, and another the housing on it. There are a number of consequences that flow from this:

- There is a degree of mutual dependency in land and housing values. While land value is based on unimproved capital value, the value of a residential park as a going concern is enhanced by the quality of the housing located on it (it is for this reason, for example, that failure to maintain housing to an acceptable standard may be a cause for termination). The value of the housing is also enhanced by the park location, which can often, for example, be in attractive coastal or riverbank surroundings.

- Thus, ideally, when a park proprietor or a manufactured-home owner decides to sell his/her property, its capital value should be enhanced by its location. In practice, as the legislation currently stands, at this point the bargaining relationship between the two is inherently unequal, and in the event of sale by either party, the accrued values are unequally shared. The park owner may benefit from the combined value of land and the homes on it, or, at the least, will capture the entire value of any appreciation of the unimproved capital value of the land. And given the location of many parks, the capital appreciation is likely to be considerable. The resident will find, however, that unless they are permitted to sell their home on-site – and this is far from being invariably the case – the value of their home will have declined, and the longer it has been on the site, the more precipitate the depreciation will be. If they or any purchaser are required to move the home off-site, not merely will the value of the home have declined, but first they will have to find another location, with similar risk factors; second they will risk damage – which may be considerable – in moving the home, and third they will face considerable costs (as much as \$20,000) in removal costs. They may face further problems in finding another location at all for their home.
- This inequity is compounded by current legislative arrangements, in which in practice the park owner has considerable advantages in determining whether on-site sale is permissible and under what conditions; in being able to offer or withhold residential tenancy agreements to prospective purchasers (with all the potential for abuse of power this holds); and in effectively being able to vet and encourage/discourage potential purchasers, making residents dependent on his *bona fides* and good will – or, in some cases, they may be forced to sell their home to the park owner at a bargain-basement price.
- This inherent inequality is exacerbated by the legal requirement that the manufactured home must be its owner's principal place of residence. The intent of this provision is clear: it is aimed at developing or preserving the communal nature of park living, and ensuring that it is a place of residence, not a *de facto* holiday park for transients. The effect, however, is to lock residents in to the park, and to place them at risk of substantial loss if they have to move out of their home – a loss that usually by definition they are ill-equipped to bear. This situation is further exacerbated by the nature of the constituency, which is predominantly (though not invariably) older people. Should they become ill requiring extensive stay in hospital, or should they need delivery of a range of services so they can age in place, or should they need to move into hostels or nursing homes, or, finally, should they die, they or their family may face serious problems, especially in the longer term, to do with the instability of the residential tenancy agreement, and to do with the bargaining inequities referred to in the previous points. The Park and Village Service puts it in even stronger terms than this, insisting that “it is fundamentally unfair that residents are stripped of their rights under the Act if their circumstances change.” Shelter NSW concurs with this assessment; and in addition to being stripped of their rights, residents are also exposed to very heavy financial penalties as a result; the sort of penalties that could make the difference between survival and penury.

The current conjuncture with the sale or redevelopment of parks has highlighted both the critically insecure state of housing in which many people had reasonably expected to end their days, and the inadequacy of the current legislative regime for dealing with the problems that

arise when people have to uproot themselves and move or sell their homes. In itself the requirement for 180 days' notice of termination of a tenancy on the basis of change of use of a park appears reasonable. However, the mechanisms for its operation mean that residents may be trapped in the park until the very last moment (with consequent difficulties in finding an alternative location and the stress this involves), or they may be forced to leave early when an alternative location becomes possible, with consequent substantial costs they may or may not recover later, and may not be able to afford in any event. The Park and Village Service notes that the present provisions "do not enable residents to effectively relocate or challenge notices of termination for change of use, and have been the subject of abuse by owners." In addition, the redress of compensation provided by Section 128 of the Act can be rendered ineffective because in practice residents are unable to access the Tribunal to enforce their rights, and because it does not provide either timely compensation or compensation for losses to the real value of their homes.

Ready access to dispute resolution is another issue that needs to be cleared up in the revised legislation. Often for the best of reasons – and certainly, in some cases, on the recommendation of some resident groups – access to speedy dispute resolution under the present legislation has been denied by clumsy and obfuscating processes, e.g., in disputes over park rules (e.g., further, the requirement that a number of residents should make a joint application in such cases), and in referral of some issues to intermediary bodies like disputes committees – in general, these processes have not been effective in practice. It would be better, fairer and timelier if any and all such disputes could simply be referred as they arise to the Tribunal for resolution.

These and other issues will be taken up in the course of this submission. In general, we concur with the recommendations of the comprehensive report produced by the Park and Village Service (PAVS), and have reproduced a number of them here. We will indicate where we are supporting the recommendations of PAVS, and where we are making additional recommendations.

## SUMMARY OF ISSUES AND RECOMMENDATIONS

### **Issue 1: Are the aims and objectives of the Residential Parks Act appropriate?**

It should be noted that the Residential Parks Act fits within the framework of consumer protection legislation administered by the Office of Fair Trading. It is aimed at balancing the rights and responsibilities of the different parties, in this case the residents and operators of residential parks as defined in the Act; and at ensuring appropriate means of resolving disputes.

It is not the function of such legislation to further the economic interests of the industry (which are best dealt with in other areas of government legislation). It is necessary to include this disclaimer simply on account of the fact that industry bodies have argued that the legislation should include such objectives as encouragement of the growth and viability of the industry. This is fundamentally to misunderstand the function of consumer protection legislation, which is simply to define the rights and responsibilities referred to, to provide mechanisms for dispute resolution, and, in particular, to provide for adequate protection of the interests of the weaker party – that is the consumers – in such a way as to ensure they are not disadvantaged in the negotiations and contractual arrangements that characterise the sector. These functions are consistent with the consumer protection role of the Office of Fair Trading.

More, it should be recognised that consumer protection legislation is a subset of human rights and social justice objectives; within this context it should be clear that secure and affordable housing is not just a commodity exchanged in the marketplace, but that home and hearth are a fundamental human necessity and human right. Consumer protection legislation such as the Residential Parks Act should accordingly be amended to recognise this as its basis and framework.

The current long title of the Act setting out the rights and obligations of residents and owners and the obligations that arise under residential tenancy agreements, accurately describes its purpose. The aims identified in the Discussion Paper of clarifying rights and responsibilities, providing a balance of rights, providing consumer protection and providing for dispute resolution are appropriate (subject to Recommendation 1). It is appropriate that the Act focuses on protecting residents who are extremely vulnerable and who, unlike other consumers, are usually unable to take their business elsewhere. While Shelter NSW recognises the importance of viability of the industry for both residents and owners, additional objectives seeking to use consumer protection legislation to further the economic interests of the industry would be improper. This is better dealt with in the context of planning and economic policy.

### **Recommendations:**

- 1. The aims and objectives of the Residential Parks Act should be amended to include recognition that residents of parks have a fundamental right to a home that is stable, secure and affordable.**
- 2. No other amendment to the aims and objectives is required.**

**We also support the following recommendations by PAVS:**

- 3. If the parliament legislates to include a provision to set out the aims and objectives, the aims identified by the discussion paper are appropriate and require no addition, that is, clarifying rights and responsibilities, providing a balance of rights, providing consumer protection and providing for dispute resolution.**
- 4. The Residential Parks Act is not an appropriate instrument for furthering the economic interests of the industry.**

**Issue 2: What new provisions, if any, does the Act need to contain to meet the aims and objectives?**

See **Recommendation 1** above, which is aimed at locating the Residential Parks Act within the philosophical and legislative framework provided by consumer protection legislation based on fundamental human rights. We believe that legislation framed in this way, and in terms of the recommendations we propose throughout this brief summary, will help to ensure better protection for all parties, greater housing security for those at risk, and a more predictable and secure environment within which the industry may flourish. We believe this stands on its own merits, and that it should inform the thinking of the Office of Fair Trading, and also of the Consumer, Trading and Tenancy Tribunal in the principles it brings to consideration of disputes.

**Issue 3: Are the present disclosure-of-information obligations appropriate?**

Commendably, the Discussion Paper prepared by the Office of Fair Trading points to a number of concerns expressed to it by residents, and these are consistent with those experienced by advocates and community workers in working with park residents on the ground. Purchase of a home, locating it on a residential park, coping with the intricacies of complex land-leasing arrangements, and getting an overall understanding of a range of literature is a daunting experience for people not always well-equipped to deal with contractual agreements. To this must be added an understandable concern to get through the paperwork and enter upon the brave new life of park residence.

It is all too easy to waive these tasks and instead to rely on the honesty and fair-mindedness of a park owner/manager whose first concern is necessarily the management of the business of running a park. Undoubtedly many park owner/managers are well-intentioned, but this is not universal, and it is not in any case a substitute for full and comprehensive disclosure and for ensuring understanding of what is taking place and the rights and responsibilities – and limitations – it entails. In particular, the fact of people moving into a lifestyle they perceive (and have been led to believe) is by its nature secure and permanent, militates against a detailed examination of the risks and potential costs of termination for anything other than their breach of the agreement. All too, often, as the Discussion Paper itself notes, “park residents have complained to the Office of Fair Trading that their accommodation is far less secure than was represented and, had they been made fully aware of their continuing occupation rights, they may have decided not to move into the park in the first place.” This is true, and accords with the experience of park workers; but it is also regrettably true that even when advisers have tried to warn them of the risk, purchasers are only too keen to brush these warnings aside.

All too often there is little understanding of the risks of the termination process generally, and specifically in the event of park closure or change-of-use termination. There is little understanding of compensation provisions, particularly limitations, entitlements and the nature of compensation available. Residents are generally unaware of crown reserve exemptions or the principal place of residence requirement. In addition, for the reasons given above, and also because of the sheer cost involved, potential purchasers may be reluctant to seek the legal advice that might alert them to potential problems.

All of this suggests several things: It suggests the importance of full, frank and clear disclosure and information; the need for time to digest and understand it; the need to encourage the seeking of advice, and of ensuring it is freely and fully available from sources such as officers of the Office of Fair Trading and of local non-government tenants' advice and advocacy services (one is tempted, indeed, to suggest making the obtaining of such advice obligatory), and of ensuring proper training for such government and non-government officers (in the latter case, it is our understanding that accredited training is undertaken through joint arrangements between PAVS and the Tenants' Union of NSW); and that regular compliance inspections of parks should take place, especially those where problems have been identified. In these last cases, non-compliance with the requirements for full disclosure of information should be penalized. Legal issues regarding termination will be discussed in the appropriate location.

Shelter NSW supports the following **Recommendations** of PAVS:

- 5. That it be a requirement under the Act that all prospective residents are given the following documents as one package:**
  - a) A copy of the residential tenancy agreement unsigned including additional terms and park rules, and any other document forming part of the agreement.**
  - b) The Question and Answer sheets,**
  - c) The Residential Park Living booklet.**
- 6. Prospective residents should also be advised that there is no requirement to enter into an agreement.**
- 7. The question and answer form should prominently display a statement along the following lines – ‘All information provided below must not be inconsistent with the provisions of the Residential Parks Act or any other act. A statement is void to the extent to which it is inconsistent with the Act or any other act.’**
- 8. Section 73 Prospective residents have the right to certain information, and s 74 Park owner must inform resident of certain arrangements and future restrictions - both sections need to be amended to require park owners to provide not only correct, but also, comprehensive information.**
- 9. Section 73(k) should require a fully dimensional diagram that accurately marks the boundaries of the site.**
- 10. Section 73 Prospective residents have the right to certain information - s 73 needs to be amended to include the following questions:**

- i) **is the park owner aware of any current or any future plans to redevelop the park?**
- ii) **what insurance cover does the park have in order to protect residents' safety on residential sites and in common areas of the park?**
- iii) **is the park on Crown land or within a Crown reserve, if so, how will this affect my residential tenancies agreement?**
- iv) **if the park ceases to be my principal place of residence, how will this affect my residential tenancies agreement?**
- v) **what provisions does the park have in place for coping with the influx of tourists during holiday periods?**
- vi) **insert after s 73(c)(iii): is the park exempt from any requirement under the Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 1995?**
- vii) **s73(2)(d) should read as follows: (d) If the park is sold what protection does a resident have against a loss of rights and in what circumstances can my agreement be terminated?**
- viii) **s73(2)(f) should read as follows: (f) Are there any restrictions on the resident regarding the sale of the resident's moveable dwelling and are there any restrictions about how the home is sold?**
- ix) **Are there any exemptions to Commonwealth or State discrimination legislation?**
- x) **What formal qualifications does the park manager hold.**

**11. The Residential Park Living booklet, which is written in lay terms and is easily understood, should be expanded to cover the noted shortcomings.**

**Issue 4: Are the termination provisions of the Act for "change of use" of a park effective?**

Shelter NSW endorses both the summary comments of PAVS and their recommendations on this issue, and reproduces them here for purposes of emphasis. Experience over the past few years clearly underlines the problems with these provisions of the Act, and not merely the potential, but the actuality, of abuse. This, combined with inadequacies in the compensation provisions referred to in the next section, is a major cause of serious problems and financial hardship for many residents ill-equipped to cope with either. On the one hand, financial constrictions may leave them trapped in a park until the last moment, with consequent major trauma in identifying available alternative locations (if any), or on the other hand, they face exposure to major financial liability if they choose to move out prior to the date set for termination.

The PAVS summary commentary notes:

The change of use provisions are not operating effectively.

- **Effecting relocation** – most residents do not have the financial means to effect the move. Under the current provisions, they cannot secure the costs of relocation until after the date for vacant possession passes, when the landlord applies to the Tribunal for possession orders.
- **Loss of benefit of notice** – Residents who are unable to move prior to the hearing effectively lose the benefit of the 180 day notice.
- **Challenging the termination** – Similarly, the resident cannot challenge the notice until

the owner applies to the CTTT for possession orders. In practice, owners do not apply for possession orders. Those who are able to move often cannot risk waiting this long, because of the scarcity of available sites and relocation contractors.

- **Abuse of the change of use provision** – some unscrupulous landlords issue change of use termination notices even where there is no genuine intention to change the use.
- **In short** – the stated aims of the act, to provide an orderly process for terminations, to ensure that residents receive adequate notice, to give residents the opportunity to argue their position at the Tribunal are not being effected.

## **Recommendations**

- 12. Amendment of the Act to state that it is a term of every residential tenancy agreement that the agreement will not be terminated except in the manner prescribed by the Act.**
- 13. Amendment of section 112 to require that notices issued under section 102 to change the use of a residential site be accompanied by a Development Approval for the proposed change of use. Where a Development Approval is not required for the proposed change of use, any other documents or relevant consents or formal approvals which are required by law to effect the change of use must be attached to the notice.**
- 14. A suggestion for implementation is the creation of a new subsection (2) of section 112 “Any notice of termination issued under section 102 of this Act must be accompanied**
  - a. by a Development Approval for the proposed change of use, or**
  - b. if a Development Approval is not required for the proposed change of use, by any other documents, relevant consents or formal approvals which are required by law to effect the change of use.**
- 15. Amendment of section 114 (3) to include a new subsection which provides that, in the case of a notice of termination issued under section 102, the Tribunal may decline to terminate an agreement if it is satisfied that the intention to change the use was not, or is no longer bona fide.**
- 16. Amendment of the Act to enable the resident to apply to the Tribunal to challenge the *validity* of the notice within 60 days of receiving it.**
- 17. Owners should be required to pay their compensation obligations to residents up front**
- 18. Amendment of the Act to enable a resident to apply for compensation under section 128 for change of use as and when the need to access compensation arises. The resident is not required to list all claims for compensation in any one application.**

**Issue 5: Are the compensation provisions applying to residents who vacate due to “change of use” adequate?**

Shelter NSW endorses the recommendations of PAVS in relation to compensation, and in particular is supportive of the comments PAVS makes in relation to the issue in its full

submission. Compensation has been a vexed issue for some time, long before changes in the pattern of the industry in relation to change of use of parks. As the legislation currently stands, the compensation provisions are inflexible both in terms of their relation to actual costs, and in terms of when they may be awarded. This is one of the major problems faced by permanent park residents, and as it stands exposes them to unconscionable risk. It is vital that the legislation is amended to move the current anomalies, which virtually force residents to remain onsite until an order for possession has been awarded by the Tribunal, if they wish to take advantage of the compensation provisions. Many people on low and moderate incomes will have no choice but to take this path, thus entirely negating the point of the extended period of notice (180 days) required in such cases.

The two other major problems are the strict definition of compensation, which guarantees that actual costs other than those defined in the legislation cannot be met, and the fact that in this situation residents lose twice over: they do not get adequate compensation either for the cost of removal or the inconvenience and stress it causes (and this is quite apart from the fact that it is entirely likely they will be forced either to move to a less appealing area, or to an area where rents may be considerably higher but for which they will not be compensated); and secondly, in terms of the discussion of the interwoven nature of land and housing value, the resident suffer only penalties in terms of financial losses, and the park owner captures all of the increased value from the combined value of the land-and-housing package.

Shelter NSW also supports the comments and recommendations of PAVS in relation to compensation for destruction of a manufactured home, and for the lodgment of bonds by the park owner/developer to ensure at least some finance is available to meet removal costs. We note in particular the extended discussion of the calculation of compensation in the full PAVS submission in this section, and commend it to the Office of Fair Trading.

### **Recommendations:**

#### **In relation to the compensation mechanism:**

- 19. Amendment of the Act to ensure that residents are able to secure funds for relocation by application to the Tribunal any time after receiving the notice of termination and prior to the date for vacant possession given in the notice and subsequent termination hearings.**
- 20. Amendment of the Act to create an additional term that; where a landlord issues a notice of termination which may give rise to a claim for compensation under section 128. In any dispute, the parties should have recourse to the Tribunal.**
- 21. Amendment of Section 128 (3) and (4) to increase discretion of the Tribunal to consider other matters as may be appropriate in the circumstances of the case.**
- 22. Amendment of the Act to ensure that residents who move out prior to the date given for vacant possession in a notice of termination are not disadvantaged by doing so and are entitled to compensation under section 128.**
- 23. Section 128 needs to be amended to clarify entitlements to compensation where a dwelling is destroyed or otherwise disposed of.**

**In relation to the calculation of compensation:**

- 24. Amendment of section 128 to ensure compensation for the true value of the dwelling, based on considerations such as the value of the physical structure, the increased value of the chattel by reason of its location, the current market values and any special value to the resident, but not on any alteration to the value caused by the requirement to relocate or any other interference by the owner.**

**Issue 6: Are the rent and rent increase provisions of the Act working effectively?**

The significant number of disputes in the Tribunal over residential park rental increases is an indicator of the importance of the issue for park residents ill-equipped to pay frequent or large rent increases. The problem is exacerbated by the fact that the onus of proof lies with the resident to establish that a rent increase is excessive, despite the fact that it is not the resident seeking to change such a basic term of the agreement. The problem is further exacerbated by the fact that the information on which a dispute is to be argued is complex and technical, and lies in the hands of the park owner, not the resident. For these reasons, bodies like Shelter NSW, the Tenants' Union of NSW and PAVS have consistently argued for years that the onus of proof should be reversed.

**Recommendations:**

- 25. Amendment of the Act to ensure that where an owner wishes to increase the rent and the increase is challenged by the resident, it is the owner, being the party who wishes to change the rent term of the agreement, who bears the onus of proof justifying the increase.**
- 26. Amendment of the Act to ensure that no more than one rent increase notice may be issued in any 12-month period**
- 27. Amendment of the Act to ensure that, when considering increases under section 57(d), the Tribunal should only consider increases to the CPI for the 12-month period preceding the rent increase notice.**

**Issue 7: Do the current provisions dealing with sale of dwellings while located within a park operate effectively? Are there additional issues that need to be addressed?**

Interference with sales and consequent substantial loss for residents is a widespread problem when residents wish to sell their property. As the legislation currently stands, the park owner can virtually by fiat deny residents the right to sell their property, and, in extreme cases, in practice force them to sell to him at discounted prices. The legislation is set up in such a way that it virtually encourages such sharp practices. As things stand it is in the interests of the park owner to discourage private sale by the resident, or for the resident to use anybody other than the park owner as agent for the sale.

It is also, in practice, easy for an unscrupulous park owner to discourage potential purchasers to look at any properties other than those for which the park owner is acting as agent, and it is also easy for the park owner to discourage or abort purchases simply by indicating that the future of the park is uncertain. It should simply be the case that owners are prohibited from

preventing sales (also addressed later in this submission), and required to pay compensation where their inappropriate interference has prevented a sale or resulted in sale at a substantially reduced price. Residents are unable to obtain compensation for interference with sale specifically, even though they stand to suffer significant losses as a result of interference with the sale of the dwelling that cannot always be addressed under section 41 (rights to assign and sublet). Subsection 82(3) is too broad and is open to misinterpretation and abuse. Unscrupulous owners are able to profiteer from the residents' vulnerable position.

### **Recommendations**

**28. Section 82 (3) should be repealed.**

**29. The Act should be amended to provide that section 82 (without subsection 3) is a term of every Agreement.**

**30. Section 85 should be amended to enable the Tribunal to make orders for compensation where there has been interference with the sale of a dwelling. The amount of compensation should not be limited by any provision of any Act (such as s85(3) of the Residential Tenancies Act 1987) that limits the amount of compensation for which the Tribunal can make an order.**

**31. The Act should be amended to prohibit additional terms which require the resident to appoint the owner as agent if the dwelling is sold.**

### **Issue 8: Would the availability of long fixed term tenancy agreements for residential park occupation be of benefit to residents and park owners?**

While anything that will ensure the greater stability, security and peace of mind of people who have placed the homes on sites in the belief that they are securely housed is to be encouraged, it does not follow that the availability and proper registration of long-term leases will guarantee this. Ultimately, the parties cannot be compelled to enter into long-term agreements. We commend the extended study of this issue in the full PAVS submission.

Leases of more than three years are often not registered. This means that they are not enforceable against subsequent legal interests, such as a new owner if the park is sold. Residents cannot effect registration without the assistance of the owner, who has access to the necessary documents. Registration is difficult for residents to enforce, because of the complexity of arguments and questions about jurisdiction. Registration is relatively cheap and straightforward, as long as there is a properly surveyed plan available or already on the register. Assignments and variations of leases can be registered also.

### **Recommendations:**

**32. Amendment of the Act to include a clear provision which**

- a. states that it is a term of every agreement greater than 3 years that the Agreement be executed in registrable form and duly registered and**
- b. sets out the obligations of both parties in relation to the process and costs of registration**

**33. Costs associated with registration (such as obtaining and lodging plans or**

relevant consents) should be borne by the owner. Under no circumstances should the resident be required to pay costs beyond the registration fee of \$75.

**34. Long term Moveable Dwelling Agreements should be amended to include a term which states “that the landlord will not withhold reasonable consent to assign or sublet the premises and that no fee or fine shall be payable by the tenant to the landlord for such consent”.**

**35. The Deed of Assignment needs to be amended to include**

- c. an express indemnity by the assignee of the assignor for future liability arising from the Agreement**
- d. an express waiver/release whereby the owner/landlord releases the assignor from future liability**
- e. signature of all three parties agreeing to the assignment.**

**36. Where rent increases are not provided for in the original agreement, the Tribunal needs to have the power to direct that increases made in accordance with the Act are to be registered.**

**Issue 9: Are the provisions of the Act relating to the supply of electricity, water and gas services by park owners to residents operating effectively? Are the interests of both parties properly provided for? Are there any matters connected with these essential services that need to be further addressed?**

#### **a. Electricity supply**

There have been numerous complaints from residents about standards and often very makeshift arrangements for electricity provision, as the OFT Discussion Paper itself recognises. Ideally, all residents should simply be connected to a local supplier, and they should have the same range of choices as any other household in the region, but unfortunately this is often not possible. A variety of arrangements apply when supply comes via the park owner, and supply can sometimes be quite inadequate. On the present basis, there is little or no incentive for park owners to upgrade supply infrastructure, and *pro-rata* arrangements for service-availability charges do not adequately address the problems.

Other problems include inappropriate and draconian use of disconnection for a range of reasons (some of which, at least, would be regarded as a lock-out and subject to severe penalties, in standard tenancies), and lack of transparency in receipts (an issue about which advocacy organisations have frequently expressed concern). Given the particular constituency involved in residential parks, disconnection is downright unhealthy and dangerous and should be prohibited without an order from the Tribunal. In addition there are continuing delays in completion and introduction of Customer Service Standards that could address some of these problems, making it imperative that they should be dealt with in the legislation.

#### **Recommendations**

**37. The Act and Standard Agreement should be amended so that availability charges are not permitted unless the service provided is 60 amps or more.**

**38. The Act and Standard Agreement should be amended to ensure that availability charges must be reasonable, having regard to the standard of service being provided.**

- 39. Should the Department see fit to apply a sliding scale to service availability charges we recommend that the table listed in the Draft Customer Service Standards (Mar 2004) be amended in order to prohibit any SAC if the supply is below 30 amps.**
- 40. That clause 3.5 of the Draft Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks, March 2004 be adopted.**
- 41. That compliance with the provisions of clause 3.5 be made a term of every Agreement.**
- 42. That clause 3.5 be incorporated into the Residential Parks Act Regulations.**

#### **b. Water supply**

There are no problems with the provisions under the Act for supply of water. It is hard to see why residents should be required to pay water-usage charges in areas still operating on a flat-rate system with increased charges for excess consumption. Clearly, in these cases, water supply charges have been factored in to rental costs. We have been here before with standard tenancies, and when water-usage charges instead of an excess water system were introduced, there were no reports of any decrease in rents as a result. The problem would be exacerbated if the current requirements were changed to allow park owners to directly charge residents for water. It would simply encourage “double dipping” by the park owner, and it would also be grossly unfair without adequate measurement of water usage. The usual argument about charges being price signals discouraging over-consumption does not apply, as it would be rare indeed for residents to use so much water that it would attract an excess charge: They are on smaller lots with much smaller gardens, and often enough there are not separate bath facilities: either residents use en suite showers, or they use – and pay for – communal facilities.

#### **Recommendation**

- 43. That it be a term of every agreement that quality of water supply meets minimum standards for Australian drinking water.**
- 44. That there be no other changes made to the Act in relation to the supply of water.**

#### **c. Gas supply**

Shelter NSW endorses the comment in the PAVS submission: “The Act currently does not set down any requirements for charges, receipts or account statements in relation to either town gas or LPG. This means that there is no safeguard to ensure that supply of gas to residents is accurately measured or on par with the cost of supply to the greater community. The potential for monopolization and abuse of gas supply by owners needs to be addressed.”

#### **Recommendations:**

##### **In relation to park owner re-supply of natural/town gas to residents**

- 45. The Act should be amended to ensure that where a park owner re-supplies town gas the amount that a park owner can charge for gas is no greater than that which the local town gas supplier would charge if the resident were a direct customer of the relevant supplier.**
- 46. The Act should be amended to require park owners to provide accounts and**

receipts in line with those currently set down in the Act as regards water and electricity.

**In relation to Central LPG storage facility within the complex**

- 47. Amendment of the Act to ensure that the amount that a park owner can charge for LPG is no greater than that which the nearest town gas supplier would charge for the equivalent amount of mega-joules if the resident were a direct customer of the relevant town gas supplier.**
- 48. Amendment of the Act to require park owners to provide accounts and receipts in line with those currently set down in the Act as regards water and electricity.**
- 49. Amendment of the Act to ensure that residents have the *right to disconnect* their dwelling from the park's supply at any time and choose an alternative supplier. This would allow the resident a choice between the local town gas supplier, and buying bottled gas, or change to electricity.**
- 50. Amendment of the Act to prohibit any additional terms relating to the supply of gas or any other essential service.**
- 51. Amendment of the Act to ensure that an independent qualified body, such as WorkCover conducts regular safety checks, and that all residents are informed of the outcome of such inspections.**
- 52. Should the Office of Fair Trading envisage a system where the charges for gas are not regulated by an independent regulatory body, we ask that such a proposal be distributed to interested parties for comment.**

**In relation to service charges generally:**

- 53. That the Act be amended to ensure that residents have at least 14 days to pay for service charges after receipt of written notice that payment is due.**

**Issue 10: Is there a continuing need for mandatory park liaison committees in residential parks? Is there a better way to provide for communication and consultation between residents and management?**

Unquestionably, intentions in legislating park liaison committees were good, and were aimed at attempting to develop park communities and consultation between residents and owners/managers. They were, in fact, a response to the wishes of some resident groups. In practice, however, the legislation has proved clumsy, largely unenforceable, and easily abused. There are occasions where liaison committees have proved useful, for example, where, as PAVS says in its submission, "good management is practiced and residents groups co-exist and are able to contribute to that process." In these instances, probably liaison committees would be effective with or without legislation. It is also the case, however, that in many other cases liaison committees have been problematic and ineffective, and would be so with or without legislation. This suggests that attempting to enforce mandatory liaison committees by legislation is inappropriate and ineffective. In addition, the way they are legislated has in practice led to abuses, interference and intimidation by some park owners, and also by some groups of tenants of others. On the whole, this is an experiment that has not

been entirely successful.

What **should** be clearly legislated is an unfettered right for residents to organise, to hold tenant meetings, and to be able to freely use park facilities in doing so, and they should also have the right to exclude park owners/managers or their representatives from attendance at their meetings. The rights of individual tenants to participate or not participate should also be protected. Park owners should be encouraged to liaise and consult with resident groups: a fair and effective process of consultation would be of benefit to all parties. Shelter NSW thoroughly endorses the recommendations of PAVS.

## **Recommendations**

### **54. The Act should be amended to ensure that:**

- a. resident committees are encouraged and supported as a forum for residents to consult together before approaching the owner.**
- b. all groups and committees are voluntarily formed and non-compulsory**
- c. individuals are not excluded from any consultative process.**
- d. residents groups are not prevented from meeting together on park grounds and have access to communal facilities for conducting meetings.**
- e. the exact role and limitations of liaison committees is clarified in the Act**

### **55. If they are retained, the Act should be amended to ensure that liaison committees**

- a. are not compulsory**
- b. do not exclude residents groups or individuals**

### **56. It should be a term of every agreement that residents groups are permitted to use on-site facilities free and unencumbered by the park owner or manager. Further, the residents groups should be able to exclude the park owner from their meetings.**

### **57. If these changes are not possible, liaison committees should be abolished.**

**Issue 11: Are there any matters associated with tenancy agreements that the Act could deal with more effectively?**

Shelter NSW refers the Office of Fair Trading to the exemplary and comprehensive discussion of these issues in the full PAVS submission, and reproduces below the summary comments and recommendations of PAVS, all of which it supports.

This issue is dealt with in four sections:

- PART A: Additional terms (effectively not negotiable)
- PART B: Written Agreements (proposal to introduce specific offence)
- PART C: Additional terms requiring residents to insure/indemnify owners
- PART D: Terms (which are not additional terms)

### **PART A: Additional terms (effectively not negotiable)**

In practice, additional terms are not negotiable. Residents are faced with a take-it-or-leave-it option. If they do not agree to the additional terms, the park owner will not enter into the agreement. Residents are seldom in a position to refuse; they may have spent large amounts of money on purchasing a dwelling or on the cost of moving their dwelling from another park. Many simply have nowhere else to go. The Tribunal does not have discretionary powers similar to those provided under the Contract Review Act. Therefore, it cannot declare void or alter a term because it is unjust. Sections in the Act, such as 40 & 80, provide exemptions for certain terms that have been incorporated into standard agreements and are therefore now effectively the rule, rather than the exception. Generally, additional terms only advantage park owners. Seldom, if ever, do they provide any advantage to residents. This highlights the fact that in reality additional terms are not negotiable.

#### **Recommendations**

- 58. The Act needs to be amended in a manner that give the Tribunal powers similar to those under the Contracts Review Act 1980, thus affording the Tribunal the power to void or alter additional terms that are unjust.**
- 59. The Act needs to be amended so that it gives the Tribunal power to void additional terms that provide no benefit to the residents as they would not have been negotiated in a free and equitable manner.**
- 60. Because additional terms are almost never truly “negotiated”, the Act needs to be amended to prohibit legally contracting out by agreement of sections 40 and 80. Also, we would suggest that in future, clauses that legally permit parties to contract out of the provisions of the Act be avoided.**

### **PART B: Written Agreements (proposal to introduce specific offence)**

Large numbers of park residents who have lived permanently on parks for many years do not have written agreements. While it is desirable that all residents should have written agreements **without additional terms added**, the actual effect of introducing a specific offence for park owners who enter into agreements that are not in writing, could have serious, detrimental effects for many residents. Based on our observations of the events following introduction of a similar provision in the Holiday Parks (Long-Term Casual Occupation) Act 2002, there is a very real danger that if this proposal is introduced, current residents will be coerced into signing agreements that contain additional terms not currently part of their existing agreements. Further, the proposal could lead to residents being misled into signing agreements that reduce their rights or even purport to remove the jurisdiction of the Act.

Clarity on residents’ rights is best served by removing the confusion caused by the lack of clear delineation between the Acts. Despite its intention, the proposal of introducing a specific offence could actually add to the confusion. The uncertainty caused by the complexity of the 30 x 30 rule needs to be removed. We refer to submissions in Issue 16 below. Instead, all premises on parks that are not used for holiday purposes should only be covered by either the Residential Parks Act or the Residential Tenancies Act.

#### **Recommendations**

- 61. The Act should not be amended to create a specific offence for park owners who enter into agreements that are not in writing.**

**62. In the interests of providing residents with greater clarity on their rights the following changes are recommended:**

- a. Amendment of the Act to remove the “30x30 rule”.**
- b. Amendment of the Holiday Parks (Long-Term Casual Occupation) Act to ensure that it only covers premises that are ordinarily used for holiday purposes.**
- c. Amendment of the Holiday Parks (Long-Term Casual Occupation) Act to ensure that it provides real protection. At a minimum the Holiday Parks Act should prohibit recovery of possession of the premises except by order of the Tribunal.**
- d. Production by the Office of Fair Trading of a new printed and readily available Standard Agreement, which could be an alternative to the park industry’s standard agreement and be accessible to residents as an alternative.**

**PART C: Additional terms requiring residents to insure / indemnify owners**

The caravan industry produces residential site agreements with standard additional terms added to them. These agreements are very widely used, as caravan industry produced agreements are the only written agreements readily available to park owners. Some additional terms require residents to purchase public liability insurance for amounts of up to \$20 million and to indemnify the park owner against any claim. Residents report that such insurance is not only expensive, but also often unobtainable.

It is unconscionable for park owners to force residents to purchase any goods and services that they neither want nor require. In reality, additional terms are not negotiable and residents do not have the option of refusing to enter into agreements that include such terms. If residents do not obtain such insurance the owner may argue that they are in breach of the agreement. This could have enormous repercussions on residents, particularly those who own their dwellings as they could lose their most valued asset, their home, if their agreement is terminated.

The conclusion in *Formston & Ors v Pine Needles Village Pty Ltd* that such additional terms are void needs to be incorporated into the Act for the clarity and benefit of both parties.

**Recommendations.**

- 63. Amendment of the Act to prohibit any additional term that requires residents to purchase any goods and services.**
- 64. Amendment of the Act to clearly prohibit park owners seeking indemnity from claims.**
- 65. Shelter understands that park owners can face certain problems in obtaining insurance and that it is in the interests of all parties that parks have adequate insurance coverage. Therefore, we recommend that the Office of Fair Trading undertake an enquiry into the issue of insurance on residential parks, with the aim of finding a workable and fair outcome for all parties.**

## **Part D: Terms (which are not additional terms)**

Section 11 of the Residential Parks Act states: *A term of a residential tenancy agreement is void to the extent to which it is inconsistent with any term included in the agreement by this Act.* Case law has established that the Tribunal has power under section 11 to make a finding that an ordinary term is void, but has no power to make orders setting aside the term. Thus ordinary terms are distinguished from “additional terms which the Tribunal does have power to order as void, and park rules, which the Tribunal has the power to vary or set aside.

Because the Tribunal has no jurisdiction to make orders that a term is void, a resident disputing the validity of a term has only two options: (1) to deliberately breach the term and wait for the owner to apply to the Tribunal (exposing themselves to possible losses or termination) or (2) to seek orders under s 16(2) referring the matter to the Director-General, however, this is a cumbersome, seldom used and seldom successful option.

Without the ability to test the validity of such terms residents are left in a limbo and are unsure of their rights. This may result in residents suffering losses because they complied with terms that are illegal. Residents need an easy and accessible way to bring disputes over the validity of terms of the agreement, that are not additional terms, to the Tribunal. The Tribunal needs the authority to declare such terms void.

### **Recommendations**

- 66. Section 11 of the Act should be amended to give the Tribunal power to make orders declaring that a term is void to the extent that it is inconsistent with the Act.**

### **Issue 12: Are the Act’s provisions covering park rules and the resolution of disputes appropriate?**

There are effectively two major problems in tenants being able to challenge park rules: (1) Despite the fact that changes to park rules effectively change residential tenancy agreements, an individual cannot challenge unilateral changes (i.e., they must get the support of four other residents; and (2) There is no easy or quick redress for such disputes, as they must go through a cumbersome process for getting a disputes committee convened, and any access to the Tribunal can be inordinately delayed as a result: justice delayed is justice denied. In practice, to the best of our knowledge, disputes committees are rarely – if ever – convened, and if complainants feel they have been unfairly treated access to the Tribunal is a lengthy and convoluted process. Insofar as disputes committees effectively block access to the Tribunal, it would be fairer and easier if they were abolished (see Issue 14 below). If this is regarded as too radical, then at least they should be made non-compulsory as an alternative process for disputes resolution if people prefer to follow that path. If any tenant wishes to challenge a park rule, they should simply be able to seek an order from the Tribunal, as is the case with most other disputes.

### **Recommendations**

- 67. If the disputes committee system is retained, an individual must be able to apply directly to the committee without the need to get agreement from four or any other number of other residents.**
- 68. Amendment of subsections 90(1) & (2) of the Act to enable individual residents to**

**apply to the Tribunal to challenge park rules.**

**Issue 13: How effective is the Tribunal in resolving disputes which arise in residential parks?**

**a. Representative actions**

It is long past time for representative or class actions to be introduced, and it is something non-government agencies have advocated for a long time. The problems raised by requiring each and every case on a given park involving identical or near-identical evidence and argument are well-known, and have resulted in both the Tribunal and advocacy groups finding makeshift and informal means to deal with the impossible work-load this creates. It would be better and simpler and fairer for such actions to be formally recognised.

As a simple matter of fact, technically if there is a dispute over a rent increase on a park involving 150 residents, this would involve detailed interviews and preparation of cases, collection of individual evidence, etc, on at least 150 separate occasions. It would involve the Tribunal having at least 150 separate hearings. What this has meant in practice is that tenancy services have often been reluctant to take on residential park work just because of the inordinate workload it involves, with scarce resources having to be reallocated from other case work. The effect of this is that in such case either residents are actively discouraged from seeking their rights, or they go to the Tribunal ill-prepared and unrepresented.

Class actions should simply be provided for in the legislation. This is not like most standard tenancies, where, in practice, the large majority of residential tenancies are run by people who own one property. In one fell swoop on a residential park, the owner controls anything from half a dozen to 250 tenancies, and it is patently absurd that relevant cases cannot be heard on a representative basis. The potential as things currently stand is for manifest injustice to be done to individuals who do not make their own separate applications because they are intimidated, or because they do not have the resources or competence to do so – and these are the very people who will be, for example, forced to pay increased rent even where in other cases the Tribunal has found it to be excessive, and would unquestionably do so in this case.

**b. Heirs and executors**

Shelter NSW thoroughly endorses the view of PAVS that “it is unnecessary and inappropriate for the Tribunal to be given powers to order the removal of dwellings prior to a grant of probate being made.” In fact, heirs and executors are placed in a precarious position, in which they have all the responsibility of the tenancy, but may not have the full protection of the Act if the park is not their principal place of residence. In the latter case, they may also, with relatively minimal notice under the Residential Tenancies Act, be required to move the home off site at consequent considerable expense, including removal costs of up to \$20,000, the risk of damage or destruction to the property, and of a steep decline in the value of the property.

As PAVS notes in its full submission, Section 3 in both the Residential Parks Act and the Residential Tenancies Act deliberately includes heirs and executors in the definition of resident and tenant respectively. It was clearly the intention of parliament that heirs should inherit the agreement, and “it is incongruous that the legislation permits the inheritance of the

Agreement, but does not ensure that what is inherited is the actual Agreement, rather than an alternative which has been undermined and essential terms altered by the change of jurisdiction.” It is the Supreme Court that has the jurisdiction to make findings regarding the identity of heirs and executors, and it is inappropriate for the Tribunal to make findings which would interfere with the jurisdiction of the Supreme Court.

### **c. Powers when homes are disposed of in breach of the Act**

It appears that a drafting anomaly in Section 128 of the Act dealing with abandoned goods and dwellings provides compensation for ex-residents when landlords remove a dwelling in accordance with the Act, but omits to do so where a park owner disposes of a dwelling in a manner which contravenes the Act. In such circumstances, the only redress an ex-resident (and even the designation “ex-resident” is ambiguous in this case) has is through a civil legal action. Clearly, this anomaly should be corrected.

### **Recommendations**

- 69. Amendment of the Act to permit class actions, but not to make them mandatory in any circumstances.**
- 70. Amendment of the Act to ensure that all the provisions of the Residential Parks Act continue to apply to any agreement entered into under the Act, until the agreement is terminated under the Act.**
- 71. Amendment of section 128 of the Act to include compensation in situations where a park owner relocates, or disposes of, a dwelling in a manner contrary to the provisions of the Act.**
- 72. Amendment of the Act to provide that it is a term of every Agreement that the owner will not relocate, dispose of, or otherwise interfere with, the dwelling of the resident except in accordance with the Residential Parks Act.**

### **Issue 14: Is the concept of the Park Disputes Committee still valid? If so, should the committee have a wider dispute resolution role?**

Historically, the point about alternative dispute resolution is that it is entered voluntarily and in good faith by both parties. If this is not the case, it cannot work. It has always been anomalous that the Residential Parks Act has elevated alternative dispute resolution via a park disputes committee into a mandatory procedure. As it is presently written, the Act has created some serious problems. First, the fact that in practice there is no obligation for any member of the Disputes Committee to have any training or experience in dispute resolution, means that there is no guarantee a determination of the park disputes committee will be fair, just and acceptable to both parties. Second, and extraordinarily, Section 89(2) permits recourse to the Tribunal only if a party is dissatisfied with the committee’s decision, or if the committee fails to provide written notice of its decision within 30 days: but it does **not** specifically provide recourse to the Tribunal if a disputes committee is not convened. And third, if a park rule is changed under the current system, *an individual does not have standing to challenge that unilateral alteration of a term of their agreement*, unless they find four other residents who also wish to challenge the rule. Disputes committees have not been used. It is essential that where a park rule is changed an individual resident must be able to effectively challenge the

rule. This is a matter of both procedural and substantive justice. All of these things combined are surely a significant reason for the manifest failure of the disputes committee process. Hardly any wonder that this provision has fallen into desuetude.

In truth, as things stand it would be better if disputes committee were simply abolished. They have not worked. If they are not abolished, then they should be used only as voluntary alternative dispute resolution mechanisms. And if that is the case, then individuals should at all times have the option of going direct to the Tribunal, if that is their preference: After all, rule changes reflect a change to their individual residential tenancy agreement. It also follows that if the disputes committee system is retained, an individual must be able to apply directly to the committee and the five-resident requirement must be abolished. And finally, where a disputes committee is not convened within reasonable time, there must be recourse to the Tribunal.

### **Recommendations**

**73. Repeal of sections 87, 88 & 89 relating to Disputes Committees.**

**74. Alternatively, amendment of sections 87, 88 & 89 to make recourse to Disputes Committees non-compulsory and to enable *individual* residents to apply *directly* to the Tribunal to challenge park rules. Amendment is also required to allow parties to apply to the Tribunal if a disputes committee is not convened within reasonable time.**

**75. Amendment of section 90(1) & (2) of the Act to enable individual residents to apply to the Tribunal to challenge park rules.**

### **Issue 15: Is there any role for the Act in improving the level of competency of residential park managers?**

Managing a residential park is a complex issue, and involves a diversity of skills. And in the close community of residential parks it also requires considerable human skills, especially when, as is often the case, park owners/managers are also residents. Ironically, sadly and all too often, residential park living sometimes resembles a vestigial feudal arrangement, with the feudal landlord looking down from his manor at all of his tenants (and, indeed, in the history of common law, this is where the very terms “landlord” and “tenant” come from), each arrayed on their narrow strip of land, labouring to feed themselves, to return their tithe to the landlord and to perform feudal services as required. There have been some notorious cases where park owners/managers have adopted such feudal perspectives. Clearly this is not universally the practice, and clearly at its worst it is at the very end of the behaviour spectrum, but at some level, such attitudes much more frequently colour the relations of landlords and tenants in parks than in standard tenancies. For example, the most common complaints about park managers received by tenants’ advice and advocacy services and collated by PAVS:

- harassment and victimisation;
- selective and preferential application of park rules;
- interference with the election of park liaison committees;
- attempts to influence the decisions of people elected to liaison committees;
- lack of familiarity with or inability to accurately interpret the law.

Other complaints include interference with the sale of residents' dwellings, abusive and/or violent behaviour towards residents, and disrespectful treatment of residents generally. It is also apparent on the basis of casework experience that all too frequently park managers do not possess a working knowledge of relevant tenancy law, or choose to ignore it.

Shelter NSW endorses these comments of PAVS: "Park managers have to deal with difficult and complex situations. In addition to their normal duties, park managers are often called on and expected to deal with crisis situations and have to communicate on a number of different levels with a diverse group of residents. Because there are no minimum standards or requirements for skills, knowledge or experience for park managers, they are often ill equipped to deal with these issues.

"Currently, on-site managers of blocks of residential apartments (units) are regulated under the Property, Stock and Business Agents Act 1941. They are required to pass a fit and proper person test and their training and accreditation is part of the National Vocational Educational and Training system. By contrast, residential park managers have a far greater level of responsibility than managers of blocks of units and need a far higher level of skill in interpersonal relationships, yet they are neither regulated nor is their expertise recognised."

## **Recommendations**

- 76. Establishment of minimum qualification standards and a licensing scheme.**
- 77. Amendment of the Act to ensure that park managers obtain appropriate training qualifications.**
- 78. Amendment of the Act to provide that it is a term of every Agreement that the owner is to ensure that any person responsible for management of the park will have satisfactorily passed criminal and working with children checks.**
- 79. Amendment of the Act to state that it is a term of every Agreement that the owner will ensure that any person responsible for management of the park will have, at all times, current qualifications or licenses as may be required by the Act or as may be otherwise required by law.**
- 80. Section 73 of the Act should require a copy of the park manager's training qualifications and any other qualifications or licenses as may be otherwise required by law. Current qualifications should be displayed on a notice board at the park. Further a duty statement should be provided to prospective residents.**

## **Issue 16: Does the Act need to continue dealing with living arrangements in different types of park dwellings in separate ways?**

Given the well-documented changing pattern of residential park living, it is now time to remove legal distinctions in the treatment of residents who are, for example, living in onsite vans or cabins, or who are living in mobile homes with flexible annexes or rigid annexes. At present each of these groups is treated differently, and with varying levels of security. They range from people who have no legal rights at all to people for whom six months' notice of termination is required with some guarantee of compensation in some circumstances. It is time the law reflected the reality that all of these groups are people entitled to secure housing, and to remove the fictions that some are less deserving than others, and that some residents are not residents at all. Ironically, and as is often the case, the people with the highest levels of

need are the people with the lowest levels of legal protection and of security. The current system is causing confusion and ill feeling and undermines legitimate rights for park owners, residents, advocates and the law enforcement agencies.

As PAVS notes in its full submission, “earlier forms of accommodation on parks are rapidly becoming extinct. The continued existence of different ways of treat living arrangements is causing unnecessary confusion for park owners, advocates and police. It is providing an opportunity for the unscrupulous to further disadvantage vulnerable people.”

### **Recommendations**

- 81. That the Act and Regulations be amended so that references in the Residential Park Regulations(1999) sec 5 to different treatment of different forms of accommodation be removed.**
- 82. That the definition of a Residential Site Agreement be amended to include all dwellings that are owned by the resident.**
- 83. That no amendments be made that reduce the rights of any park resident.**

**Issue 17: Has the Act any role to play in providing resident access to emergency services such as ambulance, fire and police services?**

Shelter NSW endorses the comments and recommendations of PAVS in this section, as listed under Part A and Part B:

### **PART A: Emergency Services**

Emergency services have difficulties, not only in gaining access to parks, but also in locating the particular site they had been called to. A major problem is getting through boom gates. Every park has a different boom gate system. If unable to obtain access, the fire brigade is called to forcibly access the boom gates putting unnecessary strain on emergency resources. Another problem exists in locating sites once past the boom gate. Maps of the park are seldom displayed at the entrance of the park. There is also a need for any map to be easily read at night. Further, roads inside the park and site numbers are not clearly marked. Under the protocols that the State Rescue Board put in place it may be necessary for a resident to wait at the boom gate to direct emergency services to the relevant site. This may not always be possible.

### **Recommendations**

- 84. That it be made a term of every agreement that the park owner must ensure that emergency service vehicles have ready access to all locations on the park. Penalties should apply.**
- 85. That it be a requirement under the Act that park owners must produce a separate document detailing the system and protocols in place on the park which ensure that there is easy access for emergency vehicles. The document should form part of the tenancy agreement and be given to every park resident.**
- 86. That it be a requirement under the Act that a map of the park be displayed at**

**each entrance of all parks that clearly identifies the location of all sites and relevant structures, for example swimming pool, community hall etc. The maps must be lit at night. Further, all road names and site numbers on the park should be clearly displayed.**

## **PART B: Access to other services**

In addition to playing a role in providing residential access to emergency services, the Act also has a role to play in providing access to other goods and services.

Section 69 currently states that a park owner or manager must not restrict the right of a resident of that park to purchase goods or services from a person of his or her choice. However, goods and services can be provided by a range of agencies, not all of which require that their services be “purchased.” For example, health and community services are often provided free of charge. Residents’ rights to access these free services are not protected by the Act. PAVS has received reports of community nurses and other community workers being prevented from accessing parks. The rights of park residents to have service providers come to parks needs to be balanced against park security. A method of ensuring the legitimacy of services providers needs to be found that does not compromise park security or residents’ rights to privacy.

Residents need to be able to obtain an order from the Tribunal that prevents interference with their right to access free goods and services.

## **Recommendations**

- 87. Amendment of Section 69 to include goods and services that are free as well as purchased. It is suggested that the word “purchase” in section 69(1) be replaced with “receive”.**
- 88. If there is a need for service providers to give a reason for entering the park, he or she could be required to give details of which service they work for, but not which site they are visiting. This would enable the managers to ensure the service provider has a legitimate reason for being on the park, but provides some degree of protection to the resident’s privacy.**
- 89. Section 69 should be a term of every agreement.**
- 90. That the Office of Fair Trading strengthen the Compliance Unit to encourage investigation of complaints relating to access to the park. It is particularly important that it be possible for complaints to be initiated by health and community workers who have been denied access to their clients, especially if the resident is reluctant or unable to take action in the Tribunal.**

**Issue 18: Are there any other matters that need to be considered during this review of the Residential Parks Act?**

### **1. Coverage of the Act – principal place of residence**

Shelter NSW endorses this comment and recommendation by PAVS:

Residents spend a large proportion of their savings on moveable dwellings and move into parks on the understanding that their agreements will be regulated by the provisions of the Residential Parks Act. Most are unaware that many of the rights under the Act are stripped away if their principal place of residence status changes. The resident no longer has access to the compensation provisions of section 128 and often encounters major difficulties in obtaining consent to assign and sublet. This leaves the resident vulnerable to exploitation. If a resident wishes to leave a park, they may not be able to do so for fear of losing protection of the Act and consequently, the value of their dwelling.

It is fundamentally unjust that a party who invests substantial sums of money in buying a moveable dwelling should be stripped of those rights (including access to compensation) if their circumstances change. The rights which are enjoyed by residents as a result of entering into agreements under the Act should be maintained until the agreement is terminated.

### **Recommendation:**

**91. That the Act be amended to ensure that all the provisions of the Residential Parks Act continue to apply to any agreement entered into under the Act, despite any subsequent changes to principle place of residence, until the agreement is terminated under the provisions of the Act.**

## **2. Access to the Tribunal**

Shelter NSW endorses these PAVS comments and recommendations:

This issue has been discussed throughout issues 1-17, but some of the most urgent problems preventing access to the Tribunal are concisely summarised as follows:

- The Tribunal has no jurisdiction make orders in relation to terms (which are not additional terms or park rules).
- The Tribunal does not have power to make an order that a term is unjust.
- The present system of referring such disputes to the Commissioner is cumbersome and largely ineffective
- Residents cannot apply to the Tribunal directly to dispute the validity of a park rule
- The burden of proof on residents in excessive rent cases is unfair and limits access by residents who are poorly resourced.
- 

### **Recommendations:**

**92. That section 11 be amended to enable the Tribunal to make orders in relation to terms which it finds to be void.**

**93. That the Act be amended to enable the Tribunal to find and make orders that a term is unjust and therefore void.**

**94. That section 16 be amended to enable the Tribunal to intervene in disputes that currently can be referred to the Commissioner under s 16(3).**

**95. That the sections relating to park rules be amended to allow residents to apply individually and directly to the Tribunal.**

**96. That the onus of proof in rent increase cases be placed with the party seeking to alter the agreement, the owner.**

### **3. Compliance**

There have been some flagrant and notorious instances where park owners have flouted decisions of the Tribunal – and sometimes repeatedly – with impunity. This highlights the inadequacy of the law as it currently stands in terms of the lack of power or of instruments to enforce Tribunal decisions. This can only serve to bring the law and the Tribunal that administers the law into contempt. It also sends a message to park residents that they are wasting their time seeking orders in the Tribunal. It is in the public interest that justice is done and that it is seen to be done, and that non-compliance is not seen as a convenient option.

#### **Recommendation:**

**97. That the Act and the Consumer, Trader and Tenancy Tribunal Act be amended so that severe penalties can be imposed on park owners / managers who fail to comply with Tribunal orders.**

### **4. Compensation**

#### **a) Exemption from Civil Liabilities Act**

Shelter NSW endorses this comment and recommendation from PAVS:

The introduction of the Civil Liability Act of 2002 has created some confusion in relation to compensation proceedings under the Residential Tenancies Act, and has potential to cause similar confusion in relation to section 16(6)(d)(iii) of the Residential Parks Act.

The CTTT is an affordable, fast and relatively accessible jurisdiction with expertise in the field of tenancy law. It is appropriate that compensation claims for non-economic loss arising from breaches of the agreement or the Act be heard by this body.

From a practical point of view, matters arising from breaches of the agreement can be dealt with in their entirety and at a reduced public expense.

It is essential that claims for relatively smaller amounts of compensation be considered and awarded by the Tribunal. Such awards are essential for encouraging compliance with the Act and for remedying the wrongs arising from breaches of the Act. Implementation of these recommendations would clarify this position.

#### **Recommendation:**

**98. That the Act be amended to specify what non-economic loss is compensable under the Act. Further, the Act needs to be exempted from the operation of the Civil Liability Act 2002.**

#### **b) Section 120 Terminations**

Shelter NSW endorses this comment and recommendation by PAVS:

Section 120 provides that the Tribunal may terminate an Agreement for breach by a park owner. Like the other termination provisions listed under section 128, such a termination contemplates termination and relocation through no fault of the tenant. Residents whose Agreements are terminated under this section face the same relocation problems as residents under sections 101,102,104,118, and 127 but, as the Act now stands, do not have recourse to the provisions of section 128 (compensation). Section 120 needs to be

brought within the ambit of section 128 compensation as it provides for relocation of a resident for reasons beyond the control of the resident (the landlords breach).

**Recommendation:**

**99. That section 128 be amended to include section 120 terminations.**

**c) Section 128 “destruction” as well as “damage”**

There is currently a loophole in the legislation that allows a resident to be compensated for damage to a home caused as a result of relocation consequent upon a notice for termination in some circumstances, but not necessarily in cases where homes cannot be relocated but must be destroyed, or are damaged to the point where they are destroyed during relocation. This is clearly inconsistent, and it should be rectified in terms of the following PAVS recommendation:

**Recommendation:**

**100. That section 128 be clarified by replacing the word “damaged” with the words “damaged, destroyed or otherwise disposed of”.**

**d) Increase monetary jurisdiction**

As is invariably the case when monetary amounts are specified in legislation, it is not long before these are overtaken by changes in the cost of living. Sometimes it can be a number of years before this is rectified, and this can have deleterious effects for tenants. One clear such case is in relation to the monetary jurisdiction of the Tribunal, and the occasion of the review of the legislation is a clear case where this can be appropriately adjusted. Accordingly, Shelter NSW supports this recommendation of PAVS:

**Recommendation:**

**101. The monetary jurisdiction of the Tribunal as provided by the Residential Tenancies (Residential Premises) Regulation 1995 – Section 25A should be increased to \$25,000.**

**5. Relocation by agreement**

Shelter NSW endorses this comment and recommendation by PAVS:

Where a resident and owner agree to relocate by consent in accordance with section 129, there is often an informal agreement as to which party will bear particular costs. The problem, is that where a dispute arises from such an agreement, there is no recourse to the either the tenancy or parks division of the Tribunal to resolve the dispute.

**Recommendation:**

**102. The Act should be amended to state that relocation agreements made between the parties will be taken by the Tribunal to be additional terms of the Agreement.**

## **6. Separation of payments for services and rent**

Issues like additional terms of the agreement that effectively allow parties to contract out of the Act by applying rental payments to other purposes (e.g., utility services) have been a running sore and cause of dissension between residents and park owners for a long time. At worst, such clauses can place residents at risk of termination of their tenancy. PAVS endorses the following comment and recommendation by PAVS:

Currently, if the residential tenancy agreement specifically provides otherwise or the resident otherwise agrees, parties can contract out of the intended requirement of this section. Caravan and Camping Industry Association [CCIA] agreements now have standard additional terms that circumvent the intention of this section. It is unacceptable that some provisions of the Act permit park owners to legally circumvent the intention of the Act. This is also true for sections 80(1) and 82(3). It is clear that residents would not of their own free will agree to relinquish their rights.

It needs to be understood that there is no such thing as a negotiated additional term in residential park situations. The very nature of the tenure system on residential parks creates a power imbalance. Residents are faced with a take it or leave it option. Most residents cannot choose to go elsewhere.

### **Recommendation:**

**103. Subsection 40(1) should be amended in order to ensure that all cases where any amount paid by a resident by way of rent is to be applied to rent arrears, or rent in advance and not to any other outstanding charges payable by the resident. This section should not permit parties to contract out of the above requirement.**

## **7. Direct debit payments**

Shelter NSW endorses the following comment and recommendation by PAVS:

Agreements that demand direct debiting are proving a problem both on residential parks and in standard tenancies. It causes unnecessary complications when there is a dispute over rents, which can be further complicated by the contracting out of s 40(1) which we have outlined above. Should a resident choose to pay their rent by this method that is all very well. However, if it is a term of the Agreement even an additional term, as explained above negotiation is not possible. Further in standard tenancies there is a growing practice of landlords requiring tenants to enter into agreements with rent collection agencies to pay their rent. If the resident/tenant fails to meet the payments they are liable for significant costs. We would not like to see this questionable practice spread to residential parks.

### **Recommendation:**

**104. The Act should be amended so that it is a term of every residential tenancy agreement that a park owner shall not require payment of rent by direct debit.**

## **8. Rent receipts**

Shelter NSW endorses the following comment and recommendation by PAVS:

Currently the Tribunal cannot make orders that park owners provide accurate up-to-date rent receipts that comply with s 48, even though it is an offence for a park owner not to do so. If s 48 is made a term of the agreement this anomaly will be rectified. It is in the best interests of all the parties that the Tribunal has the power to make orders in relation to its findings on rent receipt matters.

**Recommendation:**

**105.** Section 48 should be amended in order to make it a term of the agreement.

## **9. Maintenance of trees**

Shelter NSW endorses the following comment and recommendation by PAVS:

Trees remain the property of the park owner and enhance the park amenity; it follows that the cost of maintenance of the trees should be borne by the park owner. Indeed, this would appear to be the intention of s 71, however, this point needs to be clarified as some TAAP services have encountered problems with park owners trying to pass on these costs to residents.

**Recommendation:**

**106. Section 71 should be amended in order to clarify that the cost of maintenance of trees in the residential park be borne by the park owner.**

## **10. Mail boxes**

Shelter NSW endorses the following comment and recommendation from PAVS:

It is unfair for park owners to demand payment to cover costs of obtaining and installing mailboxes from residents who do not wish to have them. The mailboxes always remain the property of the park owner and this enhances the rental value of the residential site for as long as the park operates. In addition, it is impossible to justify demanding payment from residents who also rent the dwelling as well as the site from the park owner, as there is no way these residents can recoup the costs they have paid to improve their landlord's property.

**Recommendation:**

**107. Section 76 should be amended in order to prevent park owners from demanding payment to cover costs of obtaining and installing mailboxes from residents who did not request the installation of these facilities.**

## **11. Locks and other security devices**

Shelter NSW endorses the following comment and recommendation from PAVS:

There have been some cases where residents have been denied access to newly installed mail boxes which have in-built locks. The Act currently does not provide adequate redress for residents in these circumstances.

**Recommendation:**

**108. Sections 29 & 30 should to amended to ensure that residents are provided with access to mail boxes.**

## **12. Right to cohabit with a partner, family member or carer**

It is the case that frequently park owners have abused their right to limit the number of people living on any site. While there may be good health reasons for doing so on occasion, all too often refusal or granting of permission is nothing other than a naked exercise of power or favouritism. Shelter NSW accordingly supports the following comment and recommendation from PAVS:

The standard form of agreement contains a limitation on the number of persons that may ordinarily live in at the residential premises at any one time. This term does not take into account that the circumstances of residents may change. This can include entering into a new relationship, the need to take in a child or grandchild and the need to have a live in carer. Unlike other tenants, most park residents own their dwelling, pay service charges, rent only the site and are usually unable to afford to relocate if their circumstances change.

### **Recommendation:**

- 109. That the Act be amended to include a provision which states that it is a term of every residential site that a resident has the right to cohabit with a partner, family member or carer.**