



2 October 2024

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To the Department of Justice,

**Re: Regulation of long-term residency in caravan parks in Tasmania**

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We welcome the opportunity to respond to the *Regulation of long-term residency in caravan parks in Tasmania discussion paper* ('the discussion paper'). In our experience, some long-term caravan park residents ('residents') are attracted by the lifestyle, including affordability and flexibility compared to other forms of housing, however many residents have no choice but to live in caravan parks because of cost-of-living pressures and the difficulty in securing affordable housing. Of the people that reside in caravan parks due to a lack of alternatives, a 2003 report found that most come from vulnerable groups: youth, single women (especially women with children escaping domestic violence), families, and single men.<sup>1</sup>

The lack of clarity in Tasmanian law means that many residents do not know their rights and obligations. The *Residential Tenancy Act 1997* (Tas) ('the Act') expressly provides that the Act does not apply to "any premises ordinarily used for holiday purposes".<sup>2</sup> What precisely this provision means is unclear. An identically worded provision was removed from the equivalent South Australian Act due to its ambiguity. However, some park owners rely on this provision to argue that residents are not protected by the Act. The Tenants' Union of Tasmania and other tenant advocates argue that a caravan/dwelling that is ordinarily used to house long-term residents rather than holiday goers does not fall within the exemption – that the exemption applies on a case-by-case to each individual dwelling rather than the park as a whole. Whilst our view is that the Act protects many residents who are renting a caravan/dwelling on a long-term basis, clarifying the law for both residents and park operators will provide certainty and is strongly supported. We note however that there is a class of resident not currently protected by the Act, namely those renting a site, not the caravan/dwelling. It is important that express recognition of this class of resident is provided for in any proposed law reform.

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<sup>1</sup> Australian Housing and Urban Research Institute, *On the margins? Housing risk among caravan park residents* (AHURI Final Report No. 47: August 2003) at 57.

<sup>2</sup> Section 6(2)(b) of the *Residential Tenancy Act 1997* (Tas).

- ***Definition of long-term residents***

A long-term resident should be defined to include both persons renting sites and renting a caravan/dwelling and site where it is their principal place of residence.<sup>3</sup> As well, long-term residents should have the same protections afforded to other residential tenants covered by the Act. In our opinion, there is no good policy justification for holding a resident to a higher standard. To better protect against park operators attempting to circumvent their obligations by entering into multiple short-term agreements of less than the prescribed period, we strongly recommend that the definition makes clear that it is the length of the stay and not the length of the agreement that will satisfy the definition. Finally, we would note that the definition should be applied retrospectively, given that all long-term residents of caravan parks renting both a caravan and site are arguably already protected by the Act.

- ***Energy supply and protections***

Long-term residents in caravan parks should also have the same rights, protections and assistance afforded to residential customers in relation to their energy supply.

Residents in caravan parks are typically embedded networks customers, meaning they are not individually metered or purchase their energy from a market retailer (such as Aurora Energy). As a result, they are not covered by the same broad consumer protections that exist in the National Energy Retail Rules. This can lead to circumstances of increased vulnerability, including:

- less choice of energy provider
- higher energy prices
- poor customer service and
- less consumer protections.

Prices in embedded networks are not regulated in the same way as standing offer prices that most Tasmanian households access, meaning there are no restrictions on energy rates and residents in caravan parks may experience higher prices as a result.

We recognise the importance of all electricity users being able to access consumer protections, concessions and rebates to which they are entitled. Protections for standard energy consumers should extend to those in caravan parks and to embedded networks customers more broadly, including in the ability to access state and territory energy concessions and rebates.

Tasmanian consumers should have equal or equivalent protections no matter where they live or how they get their energy. The legislation must ensure caravan park residents have access to:

- relevant family violence, disconnection and life support protections;
- concessions and rebates;
- payment difficulty support; and
- independent dispute resolution.

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<sup>3</sup> Sections 10, 23E and 143AA of the *Residential Tenancies Act 1997* (Vic). See also section 5(1) of the *Residential Parks (Long-stay Tenants) Act 2006* (WA).

### - **Rights and Responsibilities**

Long-term residents of caravan parks should have the same rights and responsibilities as residential tenants subject to the Act. Like residential tenants, residents should only be charged a maximum of four weeks rent as bond, paid to the Rental Deposit Authority<sup>4</sup> receive a condition report<sup>5</sup> and be charged a maximum amount of rent in advance.<sup>6</sup> As well, residents should only be subject to one increase in rent per annum,<sup>7</sup> receive 60 days' notice of the proposed increase<sup>8</sup> and be able to challenge the increase with the Residential Tenancy Commissioner.<sup>9</sup> Money other than rent should not be charged,<sup>10</sup> or, alternatively, residents should only be charged for electricity, gas or water if those services are separately metered.<sup>11</sup> Repairs should be carried out as soon as practicably,<sup>12</sup> and right of entry restrictions should apply.<sup>13</sup> Fixed-term lease agreements should automatically become non-fixed term lease agreements in the event that no extension or renewal is provided and a Notice to Vacate has not been issued.<sup>14</sup> Finally, residents should only be able to be evicted following the serving of a Notice to Vacate and, if necessary, an application to the Magistrates Court for the reasons set out in the Act.<sup>15</sup> As well as these protections, residents should be subject to the same obligations as residential tenants including using the premises/site primarily as a residential premise,<sup>16</sup> not using the premises/site for an unlawful purpose,<sup>17</sup> keep the premises in a reasonable state of cleanliness,<sup>18</sup> and not affix any fixtures to the property without the landlord's consent.<sup>19</sup>

However, we also acknowledge that there are some differences between long-term residents of a caravan park and residential tenants that will need to be expressly recognised. Whilst minimum standards should apply to residents renting a caravan/dwelling including that the property is clean and in good repair, some caravans

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<sup>4</sup> Section 25 of the *Residential Tenancy Act 1997* (Tas). Also see section 147 of the *Residential Tenancies Act 1997* (Vic).

<sup>5</sup> Section 26(1) of the *Residential Tenancy Act 1997* (Tas). Also see section 148 of the *Residential Tenancies Act 1997* (Vic).

<sup>6</sup> Section 19(2) of the *Residential Tenancy Act 1997* (Tas). Also see section 150 of the *Residential Tenancies Act 1997* (Vic).

<sup>7</sup> Section 20(3)(a) of the *Residential Tenancy Act 1997* (Tas). Also see section 152(5A) of the *Residential Tenancies Act 1997* (Vic).

<sup>8</sup> Section 20(3) of the *Residential Tenancy Act 1997* (Tas). Also see section 152(1) of the *Residential Tenancies Act 1997* (Vic).

<sup>9</sup> Section 23(1) of the *Residential Tenancy Act 1997* (Tas). Also see section 153 of the *Residential Tenancies Act 1997* (Vic).

<sup>10</sup> Section 17(1) of the *Residential Tenancy Act 1997* (Tas).

<sup>11</sup> Section 162 of the *Residential Tenancies Act 1997* (Vic).

<sup>12</sup> Section 33 of the *Residential Tenancy Act 1997* (Tas). Also see section 188 of the *Residential Tenancies Act 1997* (Vic).

<sup>13</sup> Section 56 of the *Residential Tenancy Act 1997* (Tas). Also see Division 8 of the *Residential Tenancies Act 1997* (Vic).

<sup>14</sup> Section 11 of the *Residential Tenancy Act 1997* (Tas).

<sup>15</sup> Section 42 of the *Residential Tenancy Act 1997* (Tas).

<sup>16</sup> Section 52(a)(ii) of the *Residential Tenancy Act 1997* (Tas). Also see section 167 of the *Residential Tenancies Act 1997* (Vic).

<sup>17</sup> Section 52(a)(i) of the *Residential Tenancy Act 1997* (Tas). Also see section 168 of the *Residential Tenancies Act 1997* (Vic).

<sup>18</sup> Section 53(1) of the *Residential Tenancy Act 1997* (Tas). Also see section 171 of the *Residential Tenancies Act 1997* (Vic).

<sup>19</sup> Section 54(1) of the *Residential Tenancy Act 1997* (Tas). Also see section 171B of the *Residential Tenancies Act 1997* (Vic).

may not have cooking or bathroom facilities. Another example is access with many caravan parks prohibiting vehicular access or access to communal facilities overnight. We strongly believe that any reform should recognise that residents retain vehicular access, 24-hour access to toilet and bathroom facilities and access to the kitchen, laundry and other communal facilities during agreed upon hours. A model that could be considered is section 176 of the *Residential Tenancies Act 1997* (Vic) which provides as follows:

**176 Caravan park owner must provide access**

*A caravan park owner must—*

*(a) provide 24 hours vehicular access for all residents to all sites; and*

*(b) provide 24 hour access for all residents to the caravan park and the communal toilet and bathroom facilities; and*

*(c) provide access during all reasonable hours for residents to recreational areas, laundry and communal facilities other than toilets and bathrooms.*

Another necessary amendment is a duty that the park operator maintain, repair and keep clean and tidy all communal areas.<sup>20</sup> Finally, in circumstances where a park operator is requesting residents to relocate to another site/caravan, there needs to be express recognition of the circumstances in which the request can be made, the residents ability to challenge the decision and reasonable compensation.<sup>21</sup>

- **Park rules**

Park rules at caravan parks usually address issues such as cleanliness, maintenance and damage to park property. As the discussion paper noted “[i]n Tasmania, a park rule-making process is not subject to any regulation, meaning they do not require the approval of park residents, or screening by a government regulator”.<sup>22</sup> We strongly believe that park rules must automatically become part of the residency agreement and disclosed to prospective and current residents. A similar model currently exists in relation to tenants of strata title by-laws, which must be provided to a prospective tenant before they enter into a residential tenancy agreement.<sup>23</sup> A model that could be considered is section 182 of the *Residential Tenancies Act 1997* (Vic) which provides as follows:

**182 Statement of rights and copy of park rules**

*Not later than the day on which a resident enters into occupation of a site in a caravan park, the caravan park owner must give the resident—*

*(a) a written statement in a form approved by the Director setting out in summary form the resident's rights and duties under this Act; and*

*(b) a copy of the caravan park rules.*

*Penalty: 60 penalty units.*

In contract law, terms cannot be amended without the consent of all parties. Given that park rules form part of a resident’s agreement it is crucial that residents are consulted

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<sup>20</sup> See, for example, section 179 of the *Residential Tenancies Act 1997* (Vic); section 61 of the *Caravan Parks Act 2012* (NT).

<sup>21</sup> Sections 144-145 of the *Caravan Parks Act 2012* (NT). Also see sections 32-32A of the *Residential Parks (Long-stay Tenants) Act 2006* (WA).

<sup>22</sup> Department of Justice, *Regulation of long-term residency in caravan parks in Tasmania* (Discussion Paper: August 2024) at 18.

<sup>23</sup> Section 64C of the *Residential Tenancy Act 1997* (Tas).

about proposed changes and have an opportunity to challenge proposed amendments. A model that could be considered is contained in sections 186-187 of the *Residential Tenancies Act 1997* (Vic) which provides that long-term residents must be consulted, sets out what the consultation must entail and provides a right of review including the factors that the Tribunal will take into account:

**186 Duties relating to caravan park rules**

*(1) A caravan park owner must give the resident at least 7 days written notice of any proposed change in the caravan park rules.*

*Penalty: 25 penalty units.*

*(2) A caravan park owner must—*

*(a) take all reasonable steps to ensure that the caravan park rules are observed by all residents; and*

*(b) ensure that the caravan park rules are reasonable and are enforced and interpreted consistently and fairly.*

*(3) A caravan park owner must consult with the residents in the caravan park about a proposed change to the caravan park rules.*

*Penalty: 60 penalty units.*

*(4) A caravan park owner is taken to have consulted with the residents in accordance with this section if the owner has—*

*(a) provided details of the proposed amendment to the caravan park rules in writing to the residents; and*

*(b) allowed at least 14 days for the residents to respond in writing; and*

*(c) considered and responded in writing to any written responses received from the residents.*

**187 What if the caravan park rules are thought to be unreasonable?**

*(1) A resident may apply to the Tribunal for an order declaring a caravan park rule to be unreasonable.*

*(3) If the Tribunal considers that a caravan park rule is unreasonable, it may declare the rule invalid.*

*(4) In making a declaration under subsection (3) the Tribunal must have regard to—*

*(a) the location of the caravan park; and*

*(b) the number and characteristics of the residents; and*

*(c) the internal layout of the caravan park; and*

*(d) the amenities, improvements, facilities and other physical features of the caravan park; and (e) the levels of rent and other charges paid by the residents.*

We also believe that there should be explicit recognition of park liaison/residents committees. Such committees are likely to comprise of engaged long-term residents who can act as a messenger between the caravan park operator and the wider caravan park community. A model that should be considered is Victoria, where residents of caravan parks are entitled to participate in the park committee,<sup>24</sup> are entitled to use communal park facilities for meetings of the committee,<sup>25</sup> and the operator is required to consult

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<sup>24</sup> Section 198A of the *Residential Tenancies Act 1997* (Vic).

<sup>25</sup> Section 198B(2) of the *Residential Tenancies Act 1997* (Vic).

with the committee about changes to rules and proposals to improve, remove or substantially restrict services or facilities.<sup>26</sup>

- ***Sale of sites, caravans/dwellings***

A final issue that will need to be addressed is a resident selling a caravan/dwelling in a caravan park. It is clear that clarification is required so that purchasers are aware of their rights and obligations. In other jurisdictions, sellers of a caravan/dwellings are required to inform the park operator that they intend to sell, the sale is conditional on the park operator agreeing to enter into a long-term residency with the prospective purchaser, and the park operator cannot unreasonably refuse.<sup>27</sup> A list of unreasonable grounds should be set out with a right to have the decision reviewed made available.<sup>28</sup>

If you have any queries, or we can be of any further assistance please do not hesitate to contact us.



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<sup>26</sup> Section 198B(3) of the *Residential Tenancies Act 1997* (Vic).

<sup>27</sup> Division 7 of the *Residential Tenancies Act 1997* (Vic). Also see Division 1 of the *Residential Parks (Long-stay Tenants) Act 2006* (WA).

<sup>28</sup> Sections 195(2), 196 of the *Residential Tenancies Act 1997* (Vic).