PAVS
PARK AND VILLAGE SERVICE
ADVICE & ADVOCACY
FOR RESIDENTIAL PARKS

Submission in response to

the Draft Exposure Bill

'Residential (Land Lease) Communities Bill 2013'

17 May 2013

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OF NEW SOUTH WALES INC

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Auspice: Combined Pensioners & Superannuants Association of NSW Inc

Residential (Land Lease) Communities Bill 2013

Submission

Introduction

Thank you for the opportunity to comment on the draft *Residential (Land Lease) Communities Bill 2013.*

Combined Pensioners & Superannuants Association of NSW Inc (CPSA)'s Park and Village Service (PAVS) is a resourcing service funded by NSW Fair Trading under the Tenants' Advice and Advocacy Program.

PAVS provides advice, training, resources, advocacy and information on the rights and responsibilities of residential park residents. PAVS also convenes the state wide Residential Parks Forum (the Forum) which draws its members from residential park representative groups, Tenants' Advice and Advocacy Service workers and other interested parties such as community workers and legal aid solicitors. The Forum meets quarterly and provides an opportunity for members to outline what is happening in their local area or Service, as well as to discuss issues of concern in relation to residential parks and seek a variety of views and opinions in relation to casework. The Forum provides PAVS with a skilled and knowledgeable consultative body.

PAVS also convenes the Parks Legal Working group (PLWG), which comprises generalist tenants' advice workers, the Tenants' Union (community legal centre) Residential Parks Legal Officer (RPLO) and other interested parties such as Legal Aid Commission solicitors. PLWG meets on a regular basis to discuss and workshop complex legal issues in relation to residential parks. PLWG provides another excellent consultative body.

PAVS is a small organisation funded for two full time equivalent positions (three part time staff members). PAVS works closely with the RPLO and workers from generalist TAAP services across the state. This ensures PAVS

is operating according to an up-to-date picture of tenancy issues in residential parks and allows early identification of emerging trends. PAVS staff have in excess of 50 years' experience in residential park matters.

PAVS has a proven 15-year record of providing high standard policy advice to Government on legislative changes and the need for policy development relating to residential parks.

In addition to having a key role in the development and review of earlier park related legislation, PAVS has been a major stakeholder in the current Review of the *Residential Parks Act 1998*. PAVS is well placed to comment on, and raise concerns about, the content of the Residential (Land Lease) Communities Bill.

Throughout the current review and roundtable meetings, the Caravan and Camping Industry Association (CCIA) has continually told Government and other stakeholders of the lack of profitability of residential parks, and that this has been caused by over-regulation of the Industry. All parties have heard how parks will have to close and lower-cost housing will be lost if the Industry is not provided with greater protections. This has also been a theme of their discussion in previous reviews and consultations.

PAVS has not been provided with any evidence or research to support these views.

PAVS is extremely concerned that Fair Trading policy staff, Ministerial staff and some roundtable participants appear to be placing a great deal of weight on the Industry's unsupported claims.

PAVS agrees that there appeared to be problems in the late 90's and early 2000's. In that time, approximately 55 parks closed completely or reduced the number of long-term sites they provided. The PAVS research paper "No Place for Home", compiled in conjunction with the IB Fell Housing Research Centre, CPSA and Shelter NSW, drew on existing research to look at the reasons for park closures at that time in NSW. The main reason for closure of parks was

the property boom (when park operators were offered lucrative sale deals and took advantage of opportunities to maximise their capital gain). The move towards changing long-term sites to tourist sites was attributed to the increase of domestic tourism (especially the advent of the “grey nomad”), which has meant park operators had a steady stream of income.

Industry growth since that time has been slow but there have been very few park closures. PAVS has noticed that park operators are increasing their market share and purchasing and operating several parks: the Hampshire Property Group, Walter Elliot Holdings and Gateway Lifestyle are prime examples of this (see attachment 1) and there is also an emergence of smaller-scale businesses where operators own two or three parks. Many of the operators who sold their parks during the property boom have re-entered the residential park Industry. It is therefore apparently incongruent that operators are increasing their market share or returning to an Industry if, as the CCIA claims, profitability is so poor (see attachment 2). This re-entry and market-share expansion does not describe an Industry in decline.

PAVS would like to raise an alternative view. It is not illogical to view growth in the Industry having been slow due to falling demand, attributable to lack of sufficient consumer protection regulation. The horrors of people losing their homes due to park closures in the early 2000’s may still be informing people to choose different, more secure, retirement options. Perhaps this is why operators are buying existing parks, with existing residents and proven profit margins. Valla Beach Village is offering prospective residents a 50% reduction on their site fees for the first 5 years of their occupation if they purchase a dwelling from the park owner (see attachment 3). Palm Lake Resort at Fern Bay is offering homes for sale at $100,000 less than the park across the road. These inducements would not be necessary if demand were high but supply low because operators were leaving the Industry.

Some park operators are trying to induce residents into parks, while other operators believe there is a huge potential market. If new legislation introduces all of the proposed changes contained in the draft Residential

(Land Lease) Communities Bill 2013, there will be a detrimental effect on existing home-owners and it will seriously dent the potential market of prospective new home owners thereby having a negative impact on new developments.

As well as income from site fees, park operators are able to generate income through the sale of new homes on their parks and from commissions received for acting as selling agents for existing homes.

The Residential (Land Lease) Communities Bill 2013 includes several sections that will result in increased costs for home owners. Operators will also obtain further financial benefit (at the expense of home owners) from many of the proposed inclusions. The increased charges for home owners / benefits to operators include:

- Agreement registration costs for agreements of a fixed term of three years or more;
- Introduction of security deposits on utilities;
- Interest earned on utility security deposits (operator benefit);
- Introduction of sewerage availability charge;
- Potential increases in water charges;
- Potential increase in electricity charges;
- Late fees on utility charges;
- Higher site fees due to multiple site fee increases allowed under the “fixed method of increase” (see rent comparator in section 6.12 of this submission);
- Costs for mediation for residents challenging an “increase by notice”;
- Higher site fee increases attributed to the park operator being able to include “projected costs” as a reason for increases;
- Higher site fee increases achieved by the park operator being able to compare site fees between those increased under the “fixed method” and those increased under the “increase by notice” method;
- The introduction of the special levy; and

- The loss of up to 50% of the capital gain, or 10% of the sale price, on a resident's home when it is sold.

Taken in isolation (other than the 50% of capital gain or 10% of sale price) each of the matters listed above will have a relatively small financial effect on residents but the cumulative effect will be devastating, particularly for those residents relying on a single pension or benefit. The new charges, coupled with the increase in home prices over recent years will seriously affect affordability. The benefit to operators however, will result in substantial increases in income.

PAVS suggests that more research and evidence is required before providing further legislative protection for the residential (land lease) community Industry, especially when this protection is at the expense of consumers.

1.3 Objects of Act

PAVS recognises the Government's desire to provide balanced legislation that provides both appropriate protections for park residents and enables a vibrant and viable Industry. However, on an individual level there is a power imbalance between residents and operators, and in order to ensure protections, any doubt about the purpose of the legislation must be decided in favour of the more vulnerable party (the resident). One of the "Objects of Act" must therefore be to maintain legislative protection for residents, as currently provided in the *Residential Parks Act 1998*.

PAVS notes that those who rent in residential (land lease) communities will have agreements under the *Residential Tenancies Act 2010* but there are also provisions within the *Residential (Land Lease) Communities Bill 2013* which apply to renters as well. This ought to be reflected in "Objects of Act" by the use of the term "resident" rather than "home owner".

Recommendations

1.3A Remove proposed Object (e) and insert new Object (e) "to provide legislative protection for community residents".

1.3B Replace "home owner" with "resident" in all Objects.

1.4 Definitions

Community or *residential community*

It is important to note that not all residential (land lease) communities contain "facilities for the personal comfort, convenience or enjoyment of persons residing in homes located on residential sites". Including this wording in the definition of "community or residential community" will likely exclude some communities from the definition and therefore the jurisdiction of the Act. It appears to be an unnecessary provision as (a) together with (b) provides an adequate description.

Residential site or *site*

The new definition of residential site has major implications in relation to 11.8 and is a severe undermining of security of tenure for home owners. PAVS hopes that this is a drafting error that will be corrected.

The definition of residential site in the *Residential Parks Act 1998* "means a site within a residential park that is used, or is intended to be used, for the installation of a moveable dwelling".

The effect of the *Residential Parks Act 1998* definition was that operators could not terminate site agreements for change of use simply because they wanted to use the site(s) for the installation of a dwelling to be used for holiday purposes.

The new definition of site agreement in the Draft Bill does not provide the same safeguards and could lead to the termination of individual or all site agreements under 11.8.

Changing a site from long-term to short-term, including replacing the dwelling, does not require development consent. This change has potential to lead to the loss of huge numbers of permanent sites without any oversight from any level of government. It has very serious and dangerous implications for security of tenure.

11.8 is already a concern and when read in conjunction with this new definition this concern is heightened. We urge the Government to revert to the previous definition of residential site contained within the *Residential Parks Act 1998*.

Recommendations

1.4A Remove (c) from definition of "community" or "residential community".

1.4B Change definition of residential site to: "residential site or site means a site within a residential park that is used, or is intended to be used, for the installation of a moveable dwelling".

2.2 Application of Act to site agreements

PAVS welcomes the clarification and additional protection provided by subsection (3). This is one of the most important and positive reforms because it ensures that home owners or their beneficiaries retain the rights provided under the Act until such a time as the agreement is terminated in accordance with the Act. A contract formed under this Act should only be terminated under this Act.

This is an important provision because often the home is the only asset a home owner has. There has been a practice of operators effectively stripping home owners of this asset by terminating agreements through the *Residential Tenancies Act 2010*. This practice will no longer be possible and a home owner or their beneficiary will now be able to sell the home on site for its true value when they no longer wish to reside in it.

PAVS understands the Industry concern about commercial landlords buying up properties and setting up sub-communities within residential (land lease) communities but we do not believe this to be inevitable or even likely. No evidence has thus far been put forward to support the possible emergence of this scenario. PAVS believes that the provision to terminate an agreement on a three year (or six year) absence by the home owner adequately addresses this concern without undermining a home owner's rights. PAVS notes that the Industry has recently indicated its willingness to accept this reform.

2.3 Application of Act to homes

PAVS understands the need to protect residential (land lease) communities from the infiltration of commercial landlords, but there is agreement between PAVS and the Industry that in certain circumstances (and where the operator has agreed) a person other than the home owner may occupy the home. The effect of (3)(a) may be to remove the home owner from the protection of the *Residential (Land Lease) Communities Bill 2013,* which we do not believe is the Government's intention.

Occupants of homes will generally be family or friends with no legal tenancy relationship with the home owner, but there may on occasion be "tenants" living in homes owned by others. Where the park operator has agreed to the sub-letting of the home, the home owner should retain the legislative protection of this Bill.

Recommendation

2.3A Remove subsection (3)(a) and insert a new appropriately worded subsection (4) to prevent "commercial landlords" coming under the protection of the Act.

2.5 Places to which this Act does not apply

PAVS is concerned about the inclusion of "community land scheme" in (b) because some parks currently covered by the legislation will be removed. There is at least one park that is currently split (part community title and part residential park). The effect of (b) will be to remove a percentage of the home owners of that park from the protection of the Act, while the remaining home owners will be covered.

Recommendation

2.5A Remove "subject to" and insert "wholly" into (b).

4.1 Disclosure statement for prospective home owners

Sub-clause (1) does not seem to serve any purpose because when a home owner places their home for sale on the market, 4.1 applies.

One of the "Objects of Act" is "to enable prospective home owners to make informed choices" yet 4.1 is a diluted and weaker provision than exists in the current legislation. If there is a genuine desire to enable prospective home owners to make informed choices, then they must be provided with any and

all information that may influence their decision on whether to enter a community and which one to enter. 4.1 does not provide for this.

The imprecise nature of provisions such as (c) and (e) leave the decision about what information to provide to the operator and information that is "key" to the prospective home owner may not be provided.

PAVS is also concerned that the vagueness of these provisions could lead to future disputes about disclosure. The Commissioner should not be overwhelmed with complaints under the "rules of conduct" or applications to the Tribunal increased under the Consumer Claims Act because the proposed legislation fails to provide for something simple and straightforward.

Under the proposed provisions the operator may leave out a rule that is "key" or fail to provide something of "material interest" to a home owner which has an impact on their residence within the community. Prescribing what must be provided will provide clarity and fairness and prevent disputes.

Recommendations

4.1A Amend (b) to include any restrictions on the use of facilities.

4.1B Amend (c) to say "a copy of the community rules".

4.1C Add "the current range of rents within the community".

4.1D Add "what facilities are available for delivery of mail to home owners".

4.1E Add "what arrangements are in place for the delivery of utilities and the cost to the home owner of these services including availability charges".

4.1F Add "what restrictions there are in adding structures such as sheds to the residential site".

4.1G Add "information about any development application that has been made during the past five years under the *Environment Planning and*

Assessment Act 1979 for the redevelopment or change of use of the community".

4.1H Add "whether any notices of termination have been issued to home owners in the past 12 months due to proposed redevelopment or change of use".

4.1I Add "details of any flood and fire events at the community within the past five years".

4.1J Add "details about any mortgagee repossession action against the operator within the past 12 months".

4.3 Time to read information and seek advice

PAVS is aware that the Industry has requested a change in this provision to enable the agreement to be signed at the first point of contact but with a 14 day cooling off period. Such a change is acceptable only if there is provision to ensure that prospective home owners are made aware in writing that a cooling off period applies.

Recommendation

4.3A Amend subsection (1) to enable an operator and prospective home owner to enter into a site agreement with a 14 day cooling off period.

4.3B Provide for the residential site agreement to contain a statement about the cooling off period.

4.5 Site agreements generally

PAVS submits that the site agreement must include the dimensions and overall size of the site. Disputes about site sizes and dimensions are often

protracted and difficult to resolve. The inclusion of this basic information in the site agreement will end all disputes on this issue.

Recommendation

4.5A Insert new (2)(a) "give the site size and dimensions.

4.5B Renumber clauses accordingly.

4.8 Prohibited terms of site agreements

Subsection (3) is unclear and could be read as though the whole agreement becomes void if it contains a prohibited term. If the intention is simply that the term is void, this must be more clearly elucidated.

If the whole agreement is void and is replaced by the prescribed standard form, then this should also be clear.

Recommendation

4.8A Clarify whether only the prohibited term or the whole agreement becomes void if the agreement contains a prohibited term.

4.10 Duration of site agreement

PAVS welcomes the move towards providing more security of tenure for home owners but 4.10 undermines rather than supports this. Prescribing a minimum three year fixed term could lead to more agreements without a fixed term because operators or home owners do not want such a long commitment.

PAVS welcomes the clarification provided by subsection (5).

Recommendation

4.10A Prescribe the minimum fixed term as 12 months rather than in excess of three years.

5.2 Home owners responsibilities

PAVS does not support the requirement at (k) that home owners must notify the operator of any absence over 30 days.

Home owners who are to be away from their home for an extended period need to make arrangements for the payment of site fees, utilities, the collection of mail and their sites to be maintained. There is no need for them to notify the park operator if these arrangements are in place, although some may choose to do so.

This provision infringes on a home owner's right to privacy and serves no real purpose.

Recommendation

5.2A Remove subsection (k).

5.3 Operator's responsibilities

The requirement of the operator to provide the site in a reasonable condition and fit for habitation must be retained. This provision was in the *Residential Parks Act 1998* but does not appear in 5.3.

New sites and new communities are particularly in need of such a provision because without it, sites could be provided without utility infrastructure or be unfit for the installation of a home.

The requirement for the operator to provide and maintain a notice board should also be retained. While many may view notice boards as old fashioned

and out of date, it is important to remember that the majority of community residents are elderly and do not have access to, or the ability to use, modern technology. The notice board is the hub for information sharing in residential communities.

PAVS welcomes the clarity provided by (g) and does not believe it is an onerous provision. Basic grounds-keeping is already undertaken by operators as part of maintaining the general amenity of the community.

Recommendations

5.3A Insert "an operator must provide the residential site in a reasonable state of cleanliness and fit for habitation."

5.3B Import section 68 of Residential Parks Act 1998 (notice boards).

5.4 Right to quiet enjoyment

This provision is weaker than that currently provided by the *Residential Parks Act 1998.* An operator must ensure that home owners enjoy peace comfort and privacy. The provision in the Draft Bill requires an extension to ensure that the operator does not permit interference.

Recommendation

5.4A Insert new (b) "the operator of a community must not permit interference with a home owner's privacy, peace and quiet or proper use and enjoyment of the site and common areas.

5.5 Access to residential site by operator

Many residents have expressed concern about the new provision enabling operators to enter their homes. PAVS supports this concern and does not

believe it is beneficial or necessary to enable such access, with the possible exception of (1)(b).

Recommendation

5.5A Remove "home" from subsection (1).

5.5B Create new subsection enabling operators to enter the home only "in an emergency, so long as entry is needed to avert danger to life or valuable property".

5.7 Access to community by emergency and home care service vehicles

PAVS welcomes the new provision providing access to the Tribunal for resolution of a dispute on this very important issue. Many operators have failed to make the required arrangements under this section and home owners have previously not had reasonable access to a remedy.

5.8 Alterations and additions to, and replacement of, homes

PAVS is concerned about what "reasonable conditions" might be in (3). What may seem reasonable to the operator may not be reasonable to the home owner.

We note that there is provision for the Tribunal to deal with disputes under (4) but it is unclear whether this extends to disputes about what may or may not be "reasonable conditions".

Recommendation

5.8A Clarify that the Tribunal is able to deal with disputes about "reasonable conditions".

5.9 Dilapidation

PAVS supports this provision but is concerned that the operator is able to take action against the home owner regarding the condition of the site when there is no obligation on the operator to provide the site in a reasonable condition under 5.3. PAVS supports 5.9 only if the operator is required to provide the site in reasonable condition and the home owner's responsibility is to maintain it that way.

5.10 Additional occupants

PAVS welcomes and supports this provision, which enables a home owner to have some control over who they invite to live with them.

We acknowledge the issues raised by the Industry at the final roundtable meeting and agree that consideration needs to be given to limiting the number of occupants to prevent overcrowding and prevent negative impacts on the community.

5.11 Sub-letting residential site or assignment of site agreement

PAVS is pleased that, at the final roundtable meeting, agreement was reached to provide some flexibility on sub-letting. However, it is still our belief that the operator should not be able to unreasonably withhold consent to any sub-let. Sub-letting does not have an impact on the operator or the community because the operator can refuse any unreasonable request.

Sub-letting can in fact benefit the operator and the community because it will lead to better maintenance of the home and the site. An absent home owner is not generally in a position to ensure regular maintenance but a tenant is required under a residential tenancy agreement to upkeep the home and the site.

It may be that the Industry is concerned about sub-letting due to their belief that “commercial landlords” will buy up homes and rent them out, thus creating sub-communities within a community. PAVS supports the Industry in wishing to prevent this occurrence but the cost is currently too high. It is not necessary to prohibit every sub-let in order to prevent a very specific occurrence.

PAVS submits that the Act must allow an “absent home owner” to sub-let with the written consent of the operator and that the operator cannot be permitted to unreasonably withhold that consent. This would be restricted to home owners who have lived in the home under a site agreement.

This is an important provision for many home owners, including those who upgrade or downsize their home within the same community. The home owner is often in a position whereby they own two homes until one is sold and they are responsible for two lots of site fees. A sub-let can alleviate financial hardship in such circumstances.

In the event that the sub-letting proposals are not amended as suggested above, then inclusion of a provision that the operator cannot unreasonably withhold consent to a six month sub-let within the three year absence period is an acceptable compromise.

Recommendation

5.11A Insert new subsection: “An operator must not unreasonably withhold or refuse consent to a sub-letting or assignment requested by a home owner”.

Or, in the alternate

5.11B Insert new subsection: “An operator must not unreasonably withhold consent to a six-month assignment requested by a home owner”.

5.13 Mail facilities

PAVS supports the agreement at the roundtable that the mail facility provisions should be imported from the *Residential Parks Act 1998*.

PAVS also supports strengthening the proposals under 5.13: mail facilities should also be private.

All residents within the community are affected by the mail provisions so the Act should reflect this (with the exclusion of the provision for individual mail facilities).

Recommendations

5.13A Import sections 75 and 76 from the Residential Parks Act 1998.

5.13B Use the term "resident" instead of "home owner" in relation to mail facilities (with the exclusion of the provision for individual mail facilities).

5.14 Maintenance of trees

This is another positive provision, which provides clarity and certainty without imposing an additional burden on operators.

There was some discussion at a recent roundtable about making new residents responsible for tree maintenance if the tree is on the residential site. PAVS does not support the Industry on this for a number of reasons.

- Trees are part of the land, which the operator owns and has an obligation to maintain;
- PAVS and the TAAP network deal with a number of disputes each year about site boundaries that have been changed by the park owner, mostly to the detriment of the resident. It is expected that there will be more of this if trees become the responsibility of residents when they are on a site;

- Disputes are anticipated about responsibility when a tree sits on a site boundary or the boundary between sites;
- Making trees the responsibility of home owners could interfere with the sale of homes because those on sites with trees may be less attractive to purchasers due to the potential associated maintenance costs;
- The provision would also be unfair and unbalanced because some home owners would incur costs and others would not; and
- Making home owners responsible for trees could result in liability claims against residents and increased insurance premiums, which is another financial burden to residents.

Operators have a duty and an opportunity to deal with trees before they get large and this can reduce problems and costs later. Any move towards making home owners responsible could lead operators to ignore early intervention in the hope of passing on charges and this could result in both increased risk and increased cost.

Operators can recoup the costs of maintenance through site fees whereas home owners cannot recoup these costs in any way.

Trees have always been the responsibility of the operator and should remain so in order to prevent an increase in disputes and health and safety risks.

5.15 Services, facilities and improvements

PAVS is concerned that the reference to “the” development consent in subsection (1) may exclude later improvements to the community.

PAVS welcomes the provision that an operator must inform residents before removing or restricting a facility or service. However, the operator must be required to give a notice under (2)(b) to all residents regardless of the existence of a residents’ committee.

PAVS is aware of issues surrounding some residents' committees whereby they do not effectively communicate on information to certain residents. Further, the operator cannot guarantee that the notice is delivered within the required timeframe if the delivery is "contracted out".

The levy for new services and facilities may be a good idea in principle but is unworkable in the form proposed and would need substantial amendment before PAVS could support it.

One main concern is the proposal to enable a special resolution to proceed where 75% of voting home owners are in favour. This could lead to ridiculous situations where only three people in a community of 100 could get a resolution up if only four home owners vote. All home owners must be given the opportunity to participate in the vote and we suggest a percentage of 95% agreement for a proposal to proceed.

An essential safeguard for home owners would be a requirement that any money collected would be held either in Trust or that provision be made for special levy monies to be held in an escrow bank account. The levy funds must be protected in case of operator bankruptcy.

Consideration should be given to prescribing an upper limit on the cost of a facility or a time limit for the collection of the levy so that it is not overly burdensome on home owners.

Written quotes should also be required and provided to home owners before a vote is taken, so that home owners can make an informed decision.

The procedures around who pays the levy, the return of funds etc. all need to be clear, fair and equitable.

PAVS acknowledges the need to provide for money to be collected from home owners but cannot support a provision that does not make allowance for hardship. Without this, home owners may be forced to sell their home or face termination because they are unable to pay for a levy that they didn't support.

If these proposals go ahead, the disclosure provisions must include levy information.

PAVS is also concerned about how residents will gain equitable benefit from the facility they pay for. In strata title schemes (which is apparently where the idea originated) the owners own the common facilities. This will not be the case in a residential community: the operator will own the facility.

It may be argued that home owners will benefit from improved sale prices but this is not certain because people move into particular communities for a range of reasons not necessarily based on facilities.

In addition, once built, the new facility will be used as a basis to argue for higher rent increases in the future because of the improved amenity of the community and/or the increased maintenance costs associated with the new facility, meaning home owners will pay twice.

Recommendations

5.15A **Change "the" to "a" in subsection (1).**

5.15B **Change the last paragraph of subsection (2) to: "the operator must give at least 30 days notice to all residents of any proposal to do so".**

5.15C **Remove (3) to (9).**

Or in the alternate, if the special levy provisions proceed:

5.15D **The special resolution must be passed by at least 95% of all home owners in the community.**

5.15E **Home owner levy deposits must be held in Trust or an escrow bank account.**

5.15F **A vote can only be taken after written quotes have been provided to home owners.**

5.15G **Procedures for the levy collection and return of funds are prescribed.**

5.15H **Include information about the operation of any current levy in the disclosure document for prospective home owners.**

5.15I **Hardship exemption provisions are included.**

5.18 Rules of conduct

PAVS welcomes this new provision.

5.20 Retaliatory conduct by operators

PAVS welcomes and supports this new provision but it should be expanded to apply to all residents, not just home owners. In many respects renters are more vulnerable than home owners and therefore have extra need of this provision.

The provision should also apply where a resident has taken, or has proposed to take, other action to enforce a right of the resident under the tenancy agreement, the Act or any other law.

Recommendations

5.20A **Change "home owner" to "resident".**

5.20B **Add new (d) where a resident has taken or proposed to take other action to enforce a right of the resident under the tenancy agreement, the Act or any other law.**

6.2 Receipt for site fees

We welcome the requirement for operators to provide a receipt for site fees when a request is made.

6.7 How and where site fees to be paid

PAVS supports the agreement reached at the final roundtable meeting for the operator to provide at least one fee-free method of site fee payments for home owners.

6.12 Increase of site fees by fixed method

PAVS acknowledges that the increase of site fees by fixed method can be beneficial to both operators and home owners because it provides certainty. However, only one increase a year should be permitted in order to provide fairness and consistency. Without such a limitation, increases by fixed method undermine the provisions in 6.13 and the commitment made by the Minster that only one increase a year will be permitted under the new Act.

If increases under both methods are not restricted to one per year, the 'norm' will become more than one increase per year as new home owners are signed up to new agreements with two or more increases each year.

There is no advantage to home owners in this provision despite Industry claims to the contrary. Two smaller increases a year will result in home owners paying more.

If this provision is genuinely about affordability for home owners and flexibility and certainty for both parties then there must be a benefit to each party. Allowing more than one increase each year is not of benefit to a home owner: it does provide certainty but it comes at a cost, in contrast to residential (land lease) community park operators would benefit from both certainty and extra income.

The table on page 26 illustrates that over a three year period, a home owner on a three year agreement with two increases a year will pay almost $400 more over the period of the agreement than if they were on a periodic agreement with one annual increase. This is $2.50 per week more, which is a significant impost for a person on a pension.

The table demonstrates that if the increases are $1.00 per week less, there is some equality for the home owner but still no real benefit: over the three year period the amount paid is still the same as under “increase by notice”. In order to be of any real benefit to the home owner, the increases under the fixed method would therefore need to be more than $1.00 per week below the increases by notice.

If this provision goes forward, in order to provide genuine benefit to home owners, it must contain a requirement that where more than one increase per year is agreed upon between the parties, the increase must be lower than what a resident would receive under the “increase by notice” method. A minimum figure or percentage should be prescribed by the Act, for example 20% lower. Without such a provision, rents will increase by stealth and home owners will again be disadvantaged.

Allowing more than one increase per year also has potential to undermine the overall rent increase provisions. Increases by fixed method cannot be challenged in the Tribunal and new agreements could therefore be entered, with higher increases pushing up the rents on some sites. These sites can then be used by operators to try to achieve higher increases under “the range and average level of site fees within the community” for increases by notice.

Prior to and during the review excessive rent increases was the most important issue raised by residents as needing to be addressed. It would be incredibly short-sighted if this opportunity to improve the legislation was missed and home owners had to immediately start lobbying for further legislative change.

Recommendation

6.12A Only allow one increase per annum under the fixed method, or where there is more than one increase per annum require that increase to be at least of 20% below the annual increase under the increase by notice method.

Table 1: Rent increase comparator

Rent period	Increase by notice: [1] Weekly rent	Amount paid	Fixed method increase: [2] Weekly rent	Amount paid	Fixed method increase: [3] Weekly rent	Amount paid
1 January – 30 June	$100	$2,600	$100	$2,600	$100	$2,600
1 July – 31 December	$100	$2,600	$105	$2,730	$104	$2,704
1 January – 30 June	$110	$2,860	$110	$2,860	$108	$2,808
1 July – 31 December	$110	$2,860	$115	$2,990	$112	$2,912
1 January – 30 June	$120	$3,120	$120	$3,120	$116	$3,016
1 July – 31 December	$120	$3,120	$125	$3,250	$120	$3,120
Total rent paid over three years		**$17,160**		**$17,550**		**$17,160**

[1] Rent increases each year on 1 January by $10.00 per week

[2] Rent increases twice a year on 1 January and 1 July by $5.00 per week

[3] Rent increases twice a year on 1 January and 1 July by $4.00 per week

6.13 increase of site fees by notice

PAVS welcomes the move to annual increases for the whole community.

6.15 Compulsory mediation about increases of site fees by notice

PAVS supports the proposals to enable site fee increases to be dealt with as a community. PAVS welcomes the inclusion of the mediation process. However there are concerns about the potential cost to home owners and this must not become a barrier to them taking action.

A number of residents have also expressed concern that 25 per cent is too high a threshold for action and that a more equitable percentage is ten per cent. Given that an individual's right to challenge an increase has been removed (except under 6.18) PAVS supports a lower threshold to ensure that the rights of home owners to challenge excessive increases are not overly restricted.

It is essential that mediators are not seen as biased in any way by any party and PAVS therefore supports the use of independent qualified mediators not linked to the Tribunal, operators or residents' groups.

Recommendation

6.15A Reduce the threshold for application for mediation to 10%.

6.17 Application following failed mediation

The Act must provide for extensions of the timeframe where mediation takes longer than expected. This mediation must not be cut short or rushed where there is potential for agreement because of the time limits for Tribunal applications.

PAVS is also concerned about the potential pressure on independent mediation services if a number of operators in the same area issue rent increase notices at the same time. PAVS requests assurance that this has been considered and that there will not be any delays causing undue anxiety for home owners.

Recommendation

6.17A Provide for time to be extended for an application to the Tribunal where mediation is delayed or extended by the mediator.

6.21 Matters to be considered about excessive increases

PAVS welcomes the attempt to simplify and make more relevant the factors for consideration by the Tribunal in excessive site fee increase matters but some of the new inclusions are alarming.

“Projected” increase must be removed. “Projected increase” requires home owners to pay for something in advance, of which they won’t necessarily have the benefit, and which may never eventuate, or which could cost a lesser amount than projected.

At the next site fee increase hearing, the Tribunal would then be required to make complex calculations because home owners will be rightfully seeking rent reductions as well as challenging the next increase if something they paid for in advance did not eventuate. This can only lead to fewer mediated agreements and more protracted proceedings. If all costs are retrospective, they are easily evidenced and calculated. This provision adds an unnecessary complexity to site fee increases.

The same applies to subsection (c). The simplest and fairest approach is for the operator to undertake the repairs or improvements and to account for any expenditure in the following site fee increase.

PAVS does not believe that (f) is a relevant consideration in site fee increase matters. The operators' rates are already part of the calculation and including the land value is double dipping: home owners' site fees are being assessed twice on the same factor.

"Fair and equitable" simply means that the Tribunal will not be awarding increases that are disproportionate across the park so that home owners living on similar sites are paying similar site fees and/or have similar increases. The Tribunal must be provided with some level of discretion and subsection (g) allows for that. To remove it would restrict the Tribunal's ability to weigh and balance the relevant factors.

We submit that the other factors that should be prescribed for consideration by the Tribunal are the annual income generated by the park owner from acting as an agent in the sale of homes, and the sale of homes to home owners moving into the community. The Industry has consistently argued that site fee increases need to be higher due to a lack of profitability in residential communities. The inclusion of income generated through sales would enable the Tribunal to make an informed decision that is fair and equitable to all parties.

Further, if the proposal to introduce capital gain sharing goes ahead then the full amount received by the operator through this provision must be a factor that the Tribunal considers in determining site fee increases.

Recommendations

6.21A Remove the word "projected" from (b).

6.21B Remove "planned" from (c)(ii).

6.21C Remove (f).

6.21D Add new factors: income generated through commission on sale of homes and income generated through the sale of homes.

6.21E Add new factor: income generated through capital gain, or sale price sharing (if these proposals proceed).

Part 7 Utility and other charges

PAVS submits that the construction of Part 7 is illogical and confusing.

Recommendation

Switch 7.1 and 7.2.

7.1 Nature of utility charges

PAVS submits that usage and availability charges must be separate and clearly defined. Availability charges are applicable to some utilities but not to others (gas). Further, electricity availability charges are linked to the amperage supplied. The proposed provision is too general and could lead to confusion and over charging.

PAVS notes that (2) enables the regulations to provide a discounted service availability charge where less than 60 amps of electricity is being supplied to the site. It is vital to retain the current *Residential Parks Act 1998* provisions linking electricity availability charges to the amperage supplied to the site because home owners should not pay full availability charges for a substandard level of supply.

Recommendation

7.1A Separate usage and availability charges.

7.1B Retain the sliding scale for service availability charge for electricity.

7.2 Limits on amounts payable by home owner

The Bill prescribes a minimum fixed term period of three years and then introduces another charge for home owners in (b). This does not provide home owners with any choice: if they enter a fixed term it must be for a period of over three years and then, if that agreement is to be registered under *Real Property Act 1900,* the home owner has to bear the cost.

PAVS is concerned that this provision could be misleading. Site agreements over three years do not need to be registered but the Bill implies that registration is a requirement. This could lead to home owners paying unnecessary charges.

There is no benefit to home owners in registration unless the land has been subdivided. PAVS therefore suggests that (b) should be amended or removed.

It is disappointing that the Bill introduces another new charge for incoming home owners in the form of security deposits. PAVS does not support the introduction of such charges and believes it to be unnecessary. This practice used to be common in the general community but this is no longer the case and most utility suppliers no longer requiring security deposits.

Operators have a quick and effective remedy for non-payment of utilities through the Consumer, Trader and Tenancy Tribunal. The introduction of security deposits is a retrograde step, placing old-fashioned systems into a purportedly modern piece of legislation.

If security deposits are to be introduced then the provision must be specific and regulated. The Bill must provide for the return of the deposit after a certain period in line with the process in the general community and include the rate of interest to be applied to a returned security deposit.

Recommendations

7.2A Remove (b) or replace with: "where the land has been sub-divided, the cost of registering or recording the agreement under the *Real Property Act 1900*, if any fixed term period exceeds three years".

7.2B Remove (c) or prescribe clear processes for the refund of security deposits plus interest after twelve months.

7.3 Utility charges payable to operator by home owner

PAVS supports the attempt to simplify the legislation, however, the utilities provisions must be clear and specific rather than generalised. The current proposal is confusing.

PAVS has heard from many current residents who do not understand these sections at all. The provisions should be divided into electricity, gas, water and sewerage, with each section setting out the rights and obligations related to that utility. This may make the Bill longer but it would also make it clearer.

PAVS notes that "the regulations may provide for a maximum charge" and submits that this should be amended to "must provide".

Water

PAVS submits that the $50 cap should continue to apply to water availability charges.

Water availability charges are linked to the size of the pipe feeding the premises: the larger the pipe, the higher the charge. For this reason the current formula was introduced and availability charges were capped at $50 per financial year. Without such a cap, availability charges would be very high and place home owners at a more significant disadvantage when compared with people in the general community.

The Act must require accounts to be issued for water charges. Those accounts should contain the information currently prescribed in section 39(3)(b) of the *Residential Parks Act 199).*

The relevant supply authority should be defined as the local water supply authority

7.3 is too general and could lead to over-charging. The provisions under the *Residential Parks Act 1998* are clear and should be retained.

Sewerage

PAVS does not support the introduction of the availability charge for sewerage. However, if it is implemented we submit that the charge should be capped at $50 per annum.

Gas

Under the *Residential Parks Act 1998*, residents cannot be charged for gas availability. Although there is no specific reference to this in the Bill it is of concern that this is another charge that may be introduced. PAVS does not support such a move and submits that the legislation should not permit such a charge.

The Act must require accounts to be issued for gas usage.

Electricity

PAVS is concerned that the new provisions could result in higher electricity charges for home owners. Under the *Residential Parks Act 1998*, the charges for electricity were the same as those under a standard form customer supply contract (set by IPART).

In the general community people are able to choose between providers and negotiate contracts to get better deals. These options are not available to home owners in residential (land lease) communities, hence the specificity of the previous provision.

In order to ensure that an operator does not charge more than the relevant electricity supplier, there must be a simple transparent system that allows a home owner to check on both the availability rates and the kWh rate.

The current system provides this. Anyone can call the local provider and check availability and consumption charges under a standard form contract. However, if the relevant supplier is the operator's supplier, this information will not be readily available because commercial agreements are complex and there are many different kinds of agreements that require different kinds of meters.

Further, the operator purchases large amounts of energy and will therefore choose an agreement that meets their commercial needs. Such agreement may not be to the benefit of home owners who consume less energy.

PAVS notes that it is a requirement of the *Electricity Supply (General) Regulation 2001 Regulation 70* that:

(b) the maximum amount that may be charged for the supply of electricity during a particular period is the ***amount that the standard retail supplier in whose supply district the premises are located would have charged under a standard form customer supply contract for that supply during that period.***

Therefore in order to comply with the regulations, the relevant supplier referred to in 7.3 (3) must be the local supplier for the district and the amount that may be charged must be no more than the amount that would have been charged by that supplier under the local standard form customer supply contract.

The Act must require the issuing of accounts. Those accounts must contain the information currently required by section 37(3) of the *Residential Parks Act 1998.* The account must also contain information about the capacity of the supply to the site (in amperes).

PAVS recommends that the current *Residential Parks Act 1998* provisions for electricity be retained.

Utilities general

PAVS has already noted above that there is no provision regarding the issuing of accounts for utilities. PAVS assumes that this is a drafting error because a failure to require accounts undermines the whole utilities section.

7.5 provides for operators to charge late fees but unless accounts are provided, a payment cannot be determined as "late".

Section 7.12 allows a home owner to recover an amount paid to the operator for utilities under a mistake of law or fact. This cannot be determined without accounts.

The Act must require accounts to be issued for utilities and prescribe the information that accounts must include.

Recommendations

7.3A Change "may" to "must" in subsection (4).

7.3B Within utilities, have separate sections for electricity, gas, water and sewerage.

7.3C Retain the $50 limit for water availability charges.

7.3D Prescribe that the relevant supply authority for water is local water supply authority.

7.3E Retain the current provisions for water charges.

7.3F Apply a $50 limit to sewerage availability charges.

7.3G Prohibit gas availability charges.

7.3H Insert new provisions requiring the operator to issue accounts for utilities and prescribe the information to be contained within those accounts.

7.3I Retain the current provisions for the supply of electricity.

7.5 Unpaid utility charges

PAVS submits that home owners should not have to pay late fees unless they have access to hardship programmes and EAPA vouchers. Although everyone should pay their utility accounts when they are due, there are times when money is tight and people fall behind.

Home owners in residential communities will be adversely affected by this provision because they do not have access to the same assistance as members of the general community in the same situation.

If late fees are allowed, the Act must prescribe timeframes for when an account becomes overdue.

The provision is too vague about the amount of fee that can be charged. The regulations should prescribe the IPART-regulated late fee for residential accounts as the maximum that an operator can charge. This would provide clarity and certainty for both parties.

PAVS submits that late fees should be prohibited on fortnightly accounts. Operators are only required to pay their accounts either monthly or quarterly and therefore a fortnightly account cannot be said to be late. This is an arrangement that both parties agree to as it provides mutual benefit – it should

not be subject to the same rules as quarterly accounts. Excluding fortnightly accounts would also make legislating for late payments much simpler.

On a quarterly basis, the late fee should not exceed the IPART-regulated late fee for residential accounts.

PAVS strongly opposes this provision at subsection (4). Utility charges are seldom simple and it is common for park owners to overcharge for utilities and seek payments to which they are not entitled. It is therefore necessary to undertake a full investigation of all the relevant facts before making a determination on such issues.

Recommendations

7.5A Remove 7.5.

In the alternate:

7.5B Prohibit the charging of late fees on fortnightly utility accounts.

7.5C Limit the late fee on quarterly accounts to the IPART-regulated late fee for residential accounts.

7.5D Remove (4).

7.6 Site fees cannot be used to pay utility charges

PAVS welcomes this provision.

7.7 Separate measurement or metering of supply utility

In order to ensure the correct measurement of utilities, meters must meet the required standards.

Recommendation

7.7A Insert new (3) that meters must meet the required standard.

8.1 Subject-matter of community rules

PAVS is disappointed that the subject matter for park rules has been removed. Very few disputes about park rules went to the Tribunal these new provisions will likely lead to an increase.

Recommendation

8.1A Restrict the subject matter for community rules as per the *Residential Parks Act 1998.*

8.8 Enforcement of community rules

PAVS submits that (4)(b) must be removed because it is an unnecessary and punitive measure which can only lead to unfair enforcement of rules: no equivalent measure is available to residents where operators or their employees breach rules.

It has been suggested that this measure may be related to dilapidation. If that is the case then it is still unnecessary because the Bill already provides a remedy for dilapidation at 5.9.

This section provides for the operator to apply to the Tribunal where a resident breaches the community rules but fails to provide this right for a resident where the operator or employees breach the rules. Again, this imbalance must be addressed through a provision for residents to apply contained within this section.

Recommendations

8.8A Remove subsection(4)(b).

8.8B Insert provision for Tribunal application and remedies for residents.

8.9 Applications to the Tribunal about community rules

PAVS supports the retention of the provision for just one person to challenge a community rule at the Tribunal. This is an important provision because a rule can adversely affect a single person. Any move to require a threshold number or quota to enable a rule challenge would undermine the rights of individuals and could lead to discrimination.

PAVS is aware that the Industry has asserted that some operators do not change their rules because of this provision, but no evidence of this was presented and only one example provided. PAVS submits that this is not sufficient to justify a move to restrict a resident's rights under this section.

If an operator believes a rule change is necessary or beneficial, it is a simple matter to introduce it and defend it at the Tribunal if it is challenged. It is not a burdensome process. On the other hand, the introduction of a threshold or quota places an unnecessary burden on residents.

A single park operator being unwilling to stand up for a rule change should not lead to rule challenges (on the grounds of fairness) being too difficult for residents or opening the door to discrimination.

9.1 Establishment of residents committee

PAVS does not believe that support from a majority of residents of a community should be required in order to establish a residents' committee. The effect of this requirement could be to prevent committees being established. Any group of residents should be able to get together and establish a committee if they so desire. There is no detriment to the operator or other residents if this happens.

PAVS welcomes the inclusion of (3)(b) because this has previously been unclear and the cause of dispute between operators and residents.

Recommendation

9.1A Remove the word "majority" from subsection (1).

10.3 "For sale" signage

PAVS supports the agreement made at the final roundtable meeting that signs should be limited to 1m x 1m, including those of the operator.

PAVS does not believe that (2) is enforceable and should be limited to "anywhere else in the community".

Recommendations

10.3A Include a provision to limit "for sale" signs to a maximum size of 1m x 1m, including those of the operator.

10.3B Limit subsection (2) to "a home owner is not entitled to display a 'for sale' sign anywhere else in the community".

10.5 Condition of home for sale

The Bill provides new remedies for operators where a home is dilapidated, making this provision an unnecessary duplication.

A home owner may have urgent need to sell and 10.5 has potential to affect the sale and therefore adversely affect the home owner. PAVS is concerned that some operators may use this provision to purchase dwellings cheaply because the home owner is vulnerable.

Essentially this provision has the potential to make interference with sales legal.

Recommendation

10.5A Delete section 10.5.

10.7 Obligation of operator to enter new site agreement

PAVS did not support the removal of the right to assign a site agreement because it seriously undermines the bargaining power of a prospective home owner.

PAVS is even more concerned that under subsection (2)(a) an operator can refuse to enter an agreement "on reasonable grounds". This provision is too vague.

PAVS is further concerned about (2)(b) because it undermines a prospective home owner's right to negotiate the terms of a site agreement including capital gain sharing (if it goes ahead). If Part 10 permits the terms in the agreement being offered but the prospective purchaser does not want to accept them, the operator can simply refuse to enter an agreement.

PAVS has consistently raised concerns about the imbalance of power in site agreement negotiations and PAVS is hugely disappointed that (2)(b) enshrines in legislation the operator's absolute power.

Parts (3)(a) and (b) are also problematic and could lead to interference with, and loss of, sale. (3)(a) contradicts the provision at 4.3 where an operator cannot require a person to enter an agreement for at least 14 days after information has been provided. This means operators will never be able to enter into an agreement within 14 days and all sales contracts entered into could become unenforceable.

Note: If 4.3 is changed and a cooling off period applies instead, the above problem will not exist.

PAVS acknowledges the desire to provide clarity to prospective home owners on sales by bringing the purchase of the home and the entering of a site agreement closer together. However, it needs to be recognised that there are two separate contracts being entered into (involving up to three or more parties). The improvement of one party's position should not be made at the expense of another's.

Subsection (5)(b) is disappointing as it allows for a site fee increase at the start of an agreement. PAVS submits that the site fee on any new agreement should be the same as that paid by the previous home owner. This amount has been agreed between the parties, or set by the Tribunal as the appropriate rate for the site and should therefore not be increased purely because the home has been sold.

Enabling operators to select another site and apply that rent is again unfair to the incoming home owner. There is no oversight of this process and an operator could choose a site that is not in fact similar. Prospective home owners should not have to start their tenure in a community by making an application to the Tribunal about site fees, however if they don't, they could end up paying more than they ought to.

This provision is both unnecessary and unfair and is introducing yet another new area of potential dispute.

Recommendations

10.7A Re-introduce the right to assign a site agreement or remove (5)(b) and insert new (5) "the site fee under the new site agreement must be no higher than the site fees currently payable by the home owner who is selling the home'.

10.7B Insert new clause "where the home is being sold by the operator and a new site agreement is being entered, the site fee should be no higher than the site fees payable for residential sites of a similar size and location within the community".

10.8 Payment of part of sale price to operator

PAVS does not support the proposals contained in subsections (1)(a) and (b) and cannot see any justification for the inclusion of this provision.

PAVS is currently seeking an opinion from counsel on this proposal.

Since the release of the Draft Bill, PAVS has received a large number of calls from home owners distressed by the possible inclusion of this provision in the new Act. During consultation with residents, not a single one has expressed anything close to support for this proposal.

PAVS is aware that capital gain sharing is a feature of the retirement villages industry and this has been used to attempt justification of the introduction of the practice into residential communities, but the two industries are not truly comparable. Retirement villages are tightly controlled and regulated and provide security of tenure, whereas residential communities do not and will never provide security of tenure. Homes in retirement villages are real estate, but homes in residential communities are chattels: these are very different things.

If these proposals go ahead all home owners will be affected, not just potential home owners as has been suggested. Current home owners may find the pool of buyers is more limited, or that the value of their home has fallen because potential purchasers are taking into account the capital gain or sale price sharing.

Further, current home owners wishing to relocate may find that the park of their choice has capital gain or sale price sharing terms in the new site agreements.

In addition, the "note" describing capital gain is flawed. If these provisions stay, the "note" must be removed and replaced with a definition of capital gain which takes account of improvements made to the home by the resident. This should not be the base cost of improvements because the value added is more than the cost of the materials and labour.

Additionally, if the capital gain provision stays, any amount received by the operator must be included as a factor for consideration in site fee increase matters. It has been suggested that capital gain sharing will alleviate the pressure on site fees so the amount of benefit the operator has received must be made known to the Tribunal.

Whether or not the capital gain provision remains in the proposed legislation, the sale price premium must be removed. Providing operators with a slice of a home owner's capital is unacceptable. It is not unreasonable to expect that any site agreement containing such a term would immediately be the subject of legal challenge.

It has been suggested that capital gain sharing will lead to improvements in communities because this will lead to improvements in sale prices for homes. This argument supports the removal of (1)(b) because it will not encourage community improvement: operators will get up to 10% of the sale price without the need to improve the community.

Recommendations

10.8A Remove 10.8 (1)(a) and (b).

11.1 Termination of site agreements

PAVS is concerned about the unintended consequences of (e). The completion of a sale and the taking of possession of a home by the purchaser may not occur on the same date. If a site agreement terminates on completion of a sale there could be a period when there is no site agreement in place and subsequently no fees are payable and there is no legislative protection for the home owner.

Recommendation

11.1A Change (e) to: "on the handing over of the home to the purchaser following completion of the sale".

11.2 Termination notices

A termination notice must include information about the method of delivery and be dated in order to establish validity. Without these details, there is no way to check whether the correct notice period has been provided.

Recommendation

11.2A Insert new subsections: the method of delivery of the notice and the date on which the notice was issued.

11.8 Termination notice by the operator for closure or change of use

PAVS cannot support 11.8 in its current form because the inclusion of (1)(a) undermines a home owner's security of tenure. Previously an operator has not been able to issue a notice of termination on the grounds that a contract for sale has been entered into. This should remain the case. This new provision has not been raised or discussed with the stakeholders and has caused much concern among current residents.

The *Residential Parks Act 1998* contained similar provisions, which were amended to provide better protection for home owners against termination where there was a potential change of use. The provisions in the new Act must do the same.

PAVS submits that 11.8 (1) to (6) should be removed and replaced with 102(1) to (5) (changing the compensation references in (4)(b) and (5)) of the *Residential Parks Act 1998*.

When a development application is not required the Tribunal must have oversight of the decision and process and 102AA of the *Residential Parks Act* must therefore also be imported.

The closure or redevelopment of a residential (land lease) community has huge impacts on the home owners, the wider community and other housing providers. The process must have oversight by government or the Tribunal to ensure that all relevant factors are considered and that home owners receive adequate legislative protection, advice and assistance.

The proposed provisions are simply not strong enough and could lead to more closures which will impact on housing generally and social housing in particular.

Recommendations

11.8A Remove 11.8 (1) to (6) and replace with 102(1) to (5) (changing the compensation references in (4)(b) and (5)) of the *Residential Parks Act 1998*.

11.8B Import section 102AA of the *Residential Parks Act 1998.*

11.12 Application by operator for termination for serious misconduct

Subsections (c) and (d) appear to obfuscate (2). PAVS expects that this is a drafting error that will be fixed.

PAVS submits that this section is too broad. In the context of a residential (land lease) community, "neighbouring property" could cover a vast area including public space, shopping centres, leisure facilities, the homes of friends and neighbours etc. A person could have their tenancy terminated and therefore lose their home for an incident totally unrelated, and in no way a threat, to the community or anyone in it.

Subsection (2)(ii) should also be restricted to a person lawfully in the community. This subsection is currently too general and could apply (for example) to a domestic violence perpetrator who has entered the community or a neighbouring facility (such as a shopping centre) and sought out the

victim. In such an example, if the victim defends themselves and causes injury to the other person, the victim risks losing his or her home.

This provision has appropriately serious consequences for offending residents and therefore must be restricted to serious situations. There is a danger in making the provision too broad: successful legal arguments about "neighbouring property" or "person occurring" could result in the weakening of the provision over time.

The provision needs to be sensibly restricted to property and people lawfully within the community. It is about the legitimate protection of employees and residents of the community and that should be clear.

Recommendations

11.12A Remove "neighbouring property" from (2)(a).

11.12B Change (2)(b)(ii) to "an occupier or other person lawfully in the community".

11.20 Relocation of home owner by operator's request

PAVS is very concerned about this section because it enables an operator to ask a home owner to move, without reason, and if refused enables the operator to issue a notice of termination. This is the same as allowing no grounds notices of termination. PAVS assumes that this is not the intention and is a drafting error.

PAVS believes that 11.20 is intended to make a similar provision to section 127 of the *Residential Parks Act 1998* but 11.20 fails to refer back to the other relevant provisions such as 11.8. This must be amended.

Further, the compensation provision needs to be specific, so that the generality of "all reasonable costs" does not lead to disputes.

PAVS submits that compensation provisions for relocation should be the same regardless of whether the community is owned by the same operator or a different operator. The impact on the home owner is the same and the compensation should therefore be the same.

Recommendation

11.20A **Change subsection (1) to: "As an alternative to issuing a notice of termination under section 11.7 or 11.8 the operator under a site agreement may, by notice in writing, request the home owner to relocate to a different residential site on a specified date, whether within the same community or within another community within a reasonable distance and with the same operator.**

11.20B **Remove (3) and insert 11.24 (2), (3) and (4).**

11.25 Compensation in other circumstances

PAVS reiterates the previously-stated position that the Tribunal should be able to determine compensation on application by a home owner prior to the commencement termination proceedings. Home owners should to be able to plan their move from a park rather than wait until they are facing termination.

The factors prescribed in the Bill are confusing and will not enable the Tribunal to make a decision about compensation, for example whether the length of time the home owner has lived on site positively or negatively affects the amount of compensation.

The only fair compensation package for a home owner in these circumstances is an independent written valuation (by a suitably qualified professional) of the home on site prior to the decision to close or change the use of the community.

Operators who sell their park to developers do so for huge profit. Home owners who have their communities broken up because of such a decision have the right to adequate compensation.

Recommendation

11.25A Remove (1) and insert new (1): A home owner may make an application to the Tribunal for compensation any time after receiving a notice of termination under 11.7, 11.8 or 11.20.

This section does not apply:

(a) in circumstances where 11.24 applies

(b) to arrangements made for the purpose of the sale of a home to the owner or operator of the community.

11.25B Insert new (3):

11.27 Home or goods abandoned after site agreement is terminated

PAVS submits that a former home owner should be given at least 14 days to arrange collection or removal of goods.

Further, the operator must be required to keep personal documents for 90 days.

Recommendations

11.27A Insert new (4)(b) "the operator may dispose of goods in accordance with this section if the former home owner has failed to collect or make arrangements to collect the goods within 14 days".

11.27B Insert new (4)(c) "the operator may dispose of goods that are personal documents in accordance with this section if the former

home owner has railed to collect or make arrangements to collect the documents within 90 days".

12.13Applications to Tribunal relating to disputes

PAVS welcomes the consolidation of the provisions into one section and expansion to include breaches of the Act.

PAVS is concerned that residents are not included in this provision and thus could be excluded from making applications to the Tribunal under the Act. Renters are covered by certain aspects of Bill and need to have access to Tribunal remedies under this Act.

"Community rules" have specific provisions and residents can apply to the Tribunal under these, but other sections (such as "residents' committees") does not give residents this right.

Recommendation

12.13A Use the term "resident" in place of "home owner".

13.9 Complaints and action under this Division

PAVS welcomes the broadening out of this provision to enable 'any person' to make a complaint.

Schedule 1 Rules of conduct for operators

PAVS welcomes the introduction of rules of conduct for operators and hope that it encourages a more professionalised Industry.