

Issues relating to security of tenure

Security of tenure can be described as the protection of a tenant's right to occupy property. Security of tenure is a key issue for tenants in residential parks, particularly home owners, given the difficulties sometimes faced in finding another park to relocate to and the costs involved in relocating a dwelling. Tenure issues are also important to park operators as they can impact on a park operator's ability to make decisions about how they operate their park or use their land.

The following issues are included in the Consultation Paper:

- whether it would be appropriate to mandate minimum lease periods;
- whether the right of a park operator to terminate a periodic tenancy 'without grounds' should remain;
- whether the right of a park operator to terminate a fixed-term tenancy if the park is sold with vacant possession should remain;
- how the Parks Act should operate in circumstances where a mortgagee, such as a bank, takes possession of a residential park; and
- recognition of certain persons as tenants, for example where a person resides in the property, but is not named on the lease.

Compensation

The Parks Act sets out a number of specific events that trigger an entitlement to compensation if the tenancy agreement is terminated. Currently under the Parks Act the park operator does not have to pay compensation if he or she terminates a periodic tenancy, or if a fixed-term agreement expires without being renewed. The Consultation Paper examines whether it would be appropriate for compensation to be payable in these circumstances.

The Consultation Paper also considers what factors should be taken into account in deciding the amount of compensation that should be paid and whether the Parks Act should clearly set out a requirement to pay compensation to a tenant who is required to relocate within the same park.

Death of a tenant – liability of a tenant's estate

The Consultation Paper looks at what should happen to the tenancy agreement upon the death of a tenant. For example, when should an agreement terminate and how should liability for ongoing rent and other expenses be dealt with.

Termination of tenancy for damage to property and violent behaviour

As park tenancies involve communal living, a tenant who causes or threatens to cause damage to property or harm to others has a disruptive influence on those residing or working at the park.

The Consultation Paper considers what measures would be most appropriate to allow park operators to deal with matters involving damage or violent behaviour in a timely and effective manner.

Park rules

The Consultation Paper looks at whether there is a need for greater regulation concerning park rules, including:

- development and variation of rules;
- enforcement of rules; and
- consequences for breach of rules.

Rent variation

The Consultation Paper examines whether any changes are required in relation to the laws concerning:

- frequency of rent reviews;
- methods of varying rent; and
- how park operators can deal with unforeseen costs.

Fees and charges

The Consultation Paper examines the general principles applicable to the charging of fees and the following specific issues:

- costs in relation to the preparation of the tenancy agreement;
- what rules should apply in relation to the charging of visitor fees;
- what rules should apply in relation to the charging of exit fees; and
- are the rules applicable to the charging of electricity costs working effectively.

Maintenance and shared facilities or premises

The provision and use of shared premises or facilities is a key factor in community living. The Consultation Paper considers the following issues:

- whether the Parks Act should specifically deal with those circumstances where a service or facility promised to tenants by the park operator is not provided;
- whether more specific obligations in relation to maintenance and repair should be included in the Parks Act;
- whether there should be greater transparency on how the maintenance component of rent is allocated; and
- how capital improvements in a park could be funded.

Sale of homes

The Consultation Paper looks at the following issues in relation to the sale of homes:

- should the home owner have the right to sell a home while it is located on site at a park and should a park operator be able to reasonably restrict access to the park for inspections by potential purchasers;

- should provisions be included in the Parks Act to ensure that park operators do not unreasonably hinder, obstruct or interfere with the sale of a home;
- what sort of information should a seller be required to provide about the useful life of a home and any ongoing maintenance requirements;
- to what extent should a park operator be involved in the sale process;
- how should tenancy rights for the purchaser of a home be established with the park operator;
- the appointment of the park operator as the selling agent and fees payable; and
- what fees should be payable to a park operator who is not the selling agent, for example, administration costs.

Park operator conduct provisions

The Consultation Paper considers how the Parks Act should deal with park operator conduct that breaches the standards set by the Australian Consumer Law. For example, misleading and deceptive conduct or unconscionable conduct.

Dispute resolution

The Consultation Paper looks at whether the current powers of the State Administrative Tribunal in determining various matters under the Parks Act are sufficient or should be broadened.

Park liaison committees

The Consultation Paper considers whether the current laws about the establishment of park liaison committees are operating effectively and whether more detailed procedures should be set out in the legislation.

The establishment of residents committees is also discussed in the Consultation Paper.