



**Submission to the
Review of the
Residential Parks
Act 2007
Discussion Paper**

July 2016

About National Seniors Australia

National Seniors Australia is a not-for-profit organisation that gives voice to issues that affect Australians aged 50 years and over. It is the largest membership organisation of its type in Australia with around 200,000 members and is the fourth largest in the world.

We give our members a voice – we listen and represent our members' views to governments, business and the community on the issues of concern to the over 50s.

We keep our members informed – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

We provide a world of opportunity – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

We help our members save – we offer member rewards with discounts from thousands of businesses across Australia. We also offer exclusive travel discounts and more tours designed for the over 50s and provide our members with affordable, quality insurance to suit their needs.

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Introduction

National Seniors welcomes the opportunity to provide a submission to the Review of the *Residential Parks Act 2007*. This submission has been prepared by the National Seniors South Australian Policy Advisory Group and is based on consultations with our members in South Australia. It provides information in response to specific questions outlined in the Discussion Paper as well as additional recommendations that we believe are relevant considerations for this Review.

Residential parks are a vital part of the affordable housing mix for older people in South Australia with limited fixed incomes seeking a retirement lifestyle. As of the 2011 Commonwealth Census¹, a third of the South Australian population was over the age of 50 (569,000 people). This was expected to increase to 612,533 people over the age of 50 in 2014². National Seniors maintains that the underlying premise of the regulatory framework should be to safeguard the interests of older people who have a basic right to affordable retirement housing.

The Act

1. **Rather than only differentiating between site and tenancy agreements, should the Act consider the following in more detail?**
 - a) **Length of lease**
 - i. **What would be considered a reasonable length of time to constitute a ‘long-term’ lease agreement?**
 - b) **Type of properties established on site?**
 - ii. **Completely transportable (i.e. caravans)**
 - iii. **Partially transportable (i.e. transportable home)**
 - iv. **Immovable (i.e. home built on slab, fully attached to utilities, located in a park where movement of homes is logistically impossible)**

National Seniors believes 20 years to be a reasonable length of time to constitute a long-term lease agreement in a residential park, with an option for a further 10 years. This would provide security of tenure for residents who often view their move into a residential park as their final home. It also provides greater clarity for investors in the event the park is on sold, that the purpose of the land is primarily to provide long-term residency.

The Act should also specify the types of dwellings allowed in residential parks as partially transportable and immovable to better reflect long-term residency. Dwellings which are completely transportable such as caravans should be excluded from the Act.

Unlike retirement villages, there is no regulation that specifies residential park housing can only be available to people over a certain age. However, in practice leases are usually offered to those over 50, with residents either retired or partially retired. This creates a ‘retirement village’ amenity in most residential parks. Regulating a minimum age of 50 for residential parks would further reinforce the intended long-term occupancy and retirement living expected from this type of affordable housing.

¹ Commonwealth of Australia (2013). N2011 Census Quick Stats, South Australia.

http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/4?opendocument&navpos=220

² Australian Bureau of Statistics. (2014). 3235.0 – Population by Age and Sex, Regions of South Australia (ASGS 2011), 2009 and 2014. <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3235.02014?OpenDocument>

National Seniors recommends:

- the Act specify 20 years as the basis for a long-term lease agreement in a residential park, with a 10 year renewal option;
- the Act define the type of properties allowable in residential parks as partially transportable and immovable to emphasis long-term occupancy; and
- amending the Act to re-define a licensed residential park as an area of land with a primary purpose of providing long-term lease agreements for retirement living that is accessible from a minimum age of 50.

2. If clearer definitions were provided to differentiate between residents (home owners leasing land) and tenants (leasing homes and land), would residents and park owners better understand their rights and obligations? Do you consider that clearer definitions would also allow improved enforcement of the Act?

While clearer definitions between residents and tenants would be beneficial, National Seniors believes differentiating between long-term and short-term occupancy is the core issue. This can be addressed by removing tenancy agreements from the Act and regulating these agreements under the *Residential Tenancies Act 1995*.

3. Should residential parks be registered with a Government authority? If so, do you believe that the cost of regulation would outweigh the benefits?

There is currently no legal requirement for residential parks and their owners to be registered, which National Seniors believes to be a significant shortcoming of the regulatory framework. Ensuring all residential parks and residential park owners are registered with a government authority would increase the accountability of residential parks and park owners. It would also enable ease of information sharing with residents and increase competition.

We believe the benefits of registration would outweigh the costs. A registration system that is publicly available, with minimum fees based on cost-recovery for the government agency responsible, would reduce potentially unscrupulous park owners from establishing residential parks and provide useful data on industry trends. Park owners often do not possess relevant skills, which leads to non-compliance. The process of registration could also provide opportunity for government to educate park owners of their responsibilities.

Over time, the registration system could include complaint and dispute resolution outcomes that give attention to better performing park operators. Such a system would contribute to improved fair trading practices across the sector that in turn would help underpin continued growth of residential parks.

National Seniors recommends:

- that the Act or Regulations be amended to establish two cross-linked government registers of (a) Residential Parks and (b) Residential Park Owners, with no exceptions.

4. Could the existing Act be amended, or should a new Act be introduced to regulate residential parks and differentiate them from typical holiday / tourist parks?

National Seniors strongly supports establishing a separate Act that governs residential parks. We believe this is the most effective way for the legislative framework to distinguish residential parks,

which are intended to provide long-term residency, from short-term tourist or temporary accommodation such as caravan parks.

In addition, National Seniors believes the review of the *Residential Parks Act 2007* must align with those of the current review of the *Retirement Villages Act 1987*, in order to ensure the two Acts, as much as possible, align in their benefits for older people. Home owners in residential parks share a common purpose with retirement village residents. Both have invested sizeable sums into age-appropriate affordable housing for the purpose of long-term security and peer group companionship and support.

We consider that appropriate regulatory consistency across residential parks and retirement villages would be relevant to defined residents of both types of accommodation: that is, residential park residents aged 50 or over who have invested in buying or building their own homes in residential parks, and retirement village residents aged 55 or over. Residential park lease agreements that involve the lease of dwellings as well as land would not be included under the amendments. These tenancy agreements would be governed under the *Residential Tenancies Act 1995*.

National Seniors recommends:

- **establishing a separate Act that governs residential parks;**
- **that Caravan or Tourist Parks intended for short-term occupancy via the lease of powered sites and/or dwellings such as caravans or on site cabins be governed under the *Residential Tenancies Act 1995*; and**
- **that the *Residential Parks Act 2007* and the *Retirement Villages Act 1987* be considered for new inclusive linkages, achieved through amending either Act or Regulations.**

Other considerations

Changes to the legislative framework for residential parks should maintain choice for older people with respect to living preferences, including allowances for pets. Importantly, there should be no exit fees in any residential parks.

National Seniors recommends:

- **that the Act allow for some residential parks to be pet-friendly and others pet-free (excluding seeing and hearing dogs) providing choice for seniors.**
- **that the Act specify no exit fees in any residential park.**

Advertising Regulations

5. Is it necessary that advertisements for a property in a residential park clearly articulate the lease agreement conditions?

National Seniors supports regulating a requirement for lease agreement conditions be included as part of the package of advertising material for a dwelling in a residential park. This would better inform potential buyers of their responsibilities up front.

6. Should there be a regulated requirement for parks to state their obligations and clearly differentiate themselves from other retiree housing options, such as retirement or lifestyle villages?

National Seniors supports a regulated requirement for advertising of residential parks to clearly differentiate from other types of retirement housing. We believe this would clarify expectations for prospective residents and would help older people make accommodation choices that better suit their needs.

Older people are increasingly attracted to residential parks because of the lifestyle factors promoted in advertising by park owners and this is even more appealing given the lack of affordable and age appropriate housing alternatives.

Since the implementation of the Act, the use of residential parks has evolved greatly and now covers an extensive range of holiday/tourist and residential parks. There are a confusing number of options for older people seeking a change of lifestyle and/or affordable housing. 'Lifestyle communities' or 'lifestyle villages' or 'over-55 communities' are all names used to describe communities of people living in caravan parks or developments which offer the purchase of units or houses on leased land.

The Act should also provide detail, including examples, on what is considered misleading advertising. For example, advertising residential parks in the SA Caravan and Camping Guide 2016 may too easily give an incorrect impression of the type of accommodation residential parks offer. This amendment assumes all short-term occupancy dwellings like caravans would be removed from the Act and governed under the *Residential Tenancies Act 1995*.

National Seniors recommends:

- **the Act specify a requirement for residential park advertising to clearly state points of difference from other types of retirement living; and**
- **the Act provide examples of misleading information, such as advertising residential parks in recreational and travel journals, to improve park owners' marketing practices.**

7. Would advertising that clearly displays information regarding length of lease options help prospective residents to make better informed decisions?

National Seniors supports including length of lease options in residential park advertising. This would be useful to prospective residents provided the duration of tenure is considered within the broader context of a resident's responsibilities. The rules specific to a residential park are critical to the experiences and level of satisfaction amongst residents and these broader considerations must be highlighted in advertising material.

Disclosure

8. What would be considered a practical amount of information to be made readily available to a prospective resident prior to purchasing a home in a residential park or entering into a lease agreement?

National Seniors supports retaining the current amount of information requirements in the Act with a further requirement to provide all information in a Plain English format that can be easily understood by prospective residents. There should also be a regulatory requirement for the lease agreements to clearly set out the potential risk and benefits of entering into a residential park. Further, all pre-signing information provided to prospective residents should restate potential risks and benefits that is framed as a 'frequently asked questions' style of communication.

We believe information presented in this way would help prospective residents better understand the critical aspects of residential park living without being overwhelmed by the complexity of the full lease agreement. It would also help prospective residents compare residential parks.

National Seniors recommends:

- **the Act should ensure that all prospective resident information is provided in standardised, Plain English in a format that meets the requirements of the Australian Disability Discrimination Act (e.g. minimum size 12 font);**
- **that lease agreements provided to residents include a ‘Risks and Benefits’ or ‘Advantages and Disadvantages’ section so that residents can better understand their situation if circumstances change; and**
- **incorporating a Frequently Asked Questions section of Potential Risks and Potential Benefits into pre-signing information.**

9. As many residents in residential parks have made significant financial investments (hundreds of thousands of dollars), are the current penalties for failure to disclose information by park owners a sufficient deterrent (maximum penalty \$750)? What would you consider a reasonable penalty to impose, should a park owner breach their disclosure obligations?

The current \$750 maximum penalty for failure to disclose information is not sufficient and fails to recognise the potential purchase risk for residents, which can be several hundred thousand dollars. We believe a higher penalty amount is needed to serve as an effective deterrent.

Legislation in other jurisdictions provides more stringent penalties. For example, park operators face a maximum penalty of \$11,000 in New South Wales under the *Residential (Land Lease) Communities Act 2013* for failure to provide a disclosure statement prior to entering the agreement.

National Seniors recommends:

- **the Act specify a maximum penalty of \$10,000 for failure to disclose information.**

Tenure Security

10. Should a minimum period for lease agreements exist when a prospective resident is planning to fully establish their dwelling in the residential park?

A regulatory requirement to offer long-term lease agreements would provide some degree of certainty for prospective residents that fully establish their dwelling in the park. Many of these residents have sold the family home and outlay significant amounts to purchase a dwelling and rent a site within a residential park for retirement living. National Seniors believes a long-term lease agreement is mutually beneficial to residents, who benefit from the security and sense of community that comes from extended tenure as well as park owners, who benefit from steady rental income to underpin their investment.

11. What do you consider to be a long-term lease?

National Seniors considers a long-term lease to be 20 years, with an option for extending a further 10 years. However, we recognise that further consideration is needed on how best to implement such long-term leases without increasing the potential risk of park owners changing the use of their park land. One option could involve offering long-term lease agreements with a minimum 10 year

initial term and then allowing automatic renewal every 5 years, unless agreed otherwise by the park owner and resident.

12. If a long-term lease agreement is signed, how often should a park owner be able to increase rent during that agreement and by how much?

A long term lease should allow for rent increase on an annual basis, but preferably less often, with the increase capped to the Consumer Price Index (CPI). Further, the method of calculating the annual rental increases should be specified in the residency agreement. If above CPI increases are proposed, the park owner must provide sufficient evidence to justify the decision and consult with the residents' committee. We believe these arrangements adequately balance the need for park owners to cover increases in costs whilst also protecting residents and tenants from excessive rent increases.

Feedback from our members highlights that for many older people, the most important factor in choosing a residential park is affordability (relative to alternative retirement housing options) and the perception that it provides security of tenure. Older singles, including those who are divorced or widowed, who have a small nest egg from a share of a property or some superannuation can often afford a home in a residential park. Singles in particular, appreciate the company and sense of personal security such accommodation provides.

Most residents and tenants in residential parks are on limited fixed incomes and are vulnerable to rental increases because the costs associated with relocating are prohibitive. Seniors in residential parks who are eligible for an Age Pension can claim rent assistance.

Whilst those living within a residential park may be eligible for the Age Pension or other commonwealth payments, including rent assistance, it is important that the regulatory framework safeguard against unfair rent increase above CPI. This would help ensure that rents are not being inflated to account for many residents being able to receive rent allowance.

National Seniors recommends:

- **Annual or less frequent rent increases capped to CPI.**

13. Once a resident reaches the end of a long-term lease, should there be a minimum extension period to the lease?

National Seniors supports establishing a minimum extension period for long-term lease agreements. As previously stated, we consider a long-term lease to be 20 years, with an option for extending a further 10 years.

However, we also recognise that the length of renewal may create a disincentive for park owners to offer long-term leases to prospective residents. In this context, we suggest further consideration be given to achieving the desired tenure security by mandating a 5 year minimum extension period with the option for longer renewal periods via agreement between a resident and the park owner.

14. Should the Residential Parks Act differentiate between short and long-term lease agreements?

National Seniors prefers that the Act distinguish residential parks as exclusively long-term, retirement housing. This would avoid the need to differentiate between short and long-term lease agreements within the current Act. Instead, all short-term leases typical of holiday and tourism parks would be governed under the *Residential Tenancies Act 1995*.

Until this new regulatory framework is implemented, National Seniors would support differentiating between short and long-term lease agreements in the current Act. We believe this will allow for greater choice between contract types for prospective residents. It would also provide flexibility for park owners in terms of site design to facilitate growth and adapt to changing resident demands for facilities and services.

Lease Termination, Notification and Compensation

15. What is a reasonable length of time for notification of a long-term lease termination, particularly where the dwelling is well established?

A substantial period of notification for lease termination should be given to long-stay residents who have invested considerable time and resources in establishing their dwelling in the park with reasonable expectations of security of tenure.

National Seniors considers 12 months to be a reasonable length of time for notification of a long-term lease termination. This will enable residents to move in a timely and cost efficient manner, allowing for a smooth transition for both the resident and the residential park owner.

National Seniors recommends:

- **a minimum 12 month notice period for termination of long-term leases.**

16. After residents have invested into a residential park and fully established their home and garden, what would be considered reasonable financial compensation should a residential park owner change the use of their land, forcing the residents to relocate?

The amount of compensation for early termination of long-term agreements should reflect the varying types of properties established in residential parks as well as the length of time the resident has had the agreement.

Residents often expect will invest a significant proportion of their retirement incomes into fully establishing their dwelling within a residential park. Some of these dwellings are built on concrete slabs and it is not possible to relocate them. Long-term stay residents also invest significant time in establishing gardens and have developed sentimental attachment as well as community connections. In these cases, compensation for early termination should be based on the full market value of the dwelling.

In situations where the dwelling is transportable, compensation for early termination should cover all the costs involved with removing their dwelling, transporting and re-sitting their dwelling to a new site. This should include costs involved in moving home contents and costs involved in re-establishing the dwelling such as landscaping. The compensation amount should also reflect the inconvenience of relocating considering a residents' duration in the park and the loss of connection to their park community.

In both cases, compensation should be paid to a resident prior to vacating the park given the majority of park residents are on limited fixed incomes.

National Seniors recommends:

- **compensation based on the full cost of relocating a moveable dwelling to another site;**
- **compensation based on the full market value of the home or unit in situations where the dwelling cannot be relocated; and**
- **compensation paid to the resident prior to vacating the park.**

17. As residential parks provide a valuable housing option to the community, what protections should be in place for a residential park owner to ensure parks remain viable?

National Seniors suggests further consideration be given to land-use planning protections to ensure residential parks remain available as an affordable housing option for older people. Guidelines for local government planning schemes should provide for zoning residential parks as special use retirement living with the primary objective of providing long-term occupancy. This would ensure councils exercise appropriate development control over change of land use requests for residential parks when preparing Development Plans and Community Development Amendment Plans.

Dispute Resolution and Escalation

18. Should it be mandatory for each residential park to establish a residents' committee which could act as an intermediary between residents and park owners?

National Seniors supports mandating the establishment of a residents' committee in all residential parks. This would signal to park owners that they have a responsibility to consult with residents and tenants. The regulation should also specify the role of the residents' committee in dealings with the park owner, the composition of the residents' committee (to include home owning residents and those who lease property and land) and processes for appointing representatives to the committee.

National Seniors believes this level of detail is necessary in the regulation to help manage possible tension in establishing matters where the residents' committee is empowered to make decisions on behalf of all residents.

19. While the current escalation process through SACAT is effective, to ensure greater efficiencies, should there be a preliminary process, using a set of preliminary steps, to resolve disputes prior to escalating matters to SACAT?

National Seniors supports improving processes for dispute resolution prior to escalating to the South Australian Civil and Administrative Tribunal (SACAT). The residents' committee could help facilitate preliminary processes and would need to be supported by relevant provisions in the regulation.

Process for Sales of Homes within Residential Parks

20. Should real estate agents provide standard information to prospective residents regarding:

- a) the purchase of a home in a residential park will require them to enter into a site agreement with the park owner?**
- b) the resident's rights to sell, sub-let or relocate a home?**
- c) their obligations as a park resident to maintain their property and abide by the park rules?**

National Seniors supports regulating a requirement for real estate agents to provide standard information to prospective residents, including confirmation of the site agreement, resident's rights

and obligations to adhere to park rules. Further, we suggest real estate agents be bound by the same set of advertising regulations that apply to park owners. The same maximum penalty for failure to disclose information should also apply to both park owners and real estate agents.

Other Considerations

National Seniors recommends:

- **That a significant financial penalty, commensurate with the investment residents are making in their housing, be incurred by property owners or real estate agents if they fail to disclose all necessary information and obligations to potential or actual residents.**

Disclosure and Maintenance of Shared Facilities and Rights to Access

21. Should real estate agents provide standard information to prospective residents regarding:

- a) **the park owner's right of entry to the residence in certain circumstances?**
- b) **the provision and removal of facilities and services, such as swimming pools and shuttle bus services?**

National Seniors believes real estate agents should provide standard information to prospective residents on the park owner's right of entry and rules governing changes to shared facilities. The same maximum penalty for failure to disclose information should apply to both park owners and real estate agents.

Other recommendations

There are currently no provisions in the Act for establishing evacuation plans, which is inadequate given the predicted increase in extreme weather events and the established risk of bushfires in many areas within close proximity to residential parks. National Seniors believes implementing appropriate evacuation plans is critical for the safety of residents.

Electricity costs are a common dispute between residents and park owners. There is a lack of transparency in attributing charges between residents because most parks have a common meter, which results in single residents being disadvantaged by larger park households consuming more energy. All residents should be provided with a separate electricity meter for their dwelling to accurately measure their energy consumption, give residents greater independence and avoid common disputes. Individual billing would also ensure that investments made by residents, such as solar panels installed at the owners' expense, are taken into account with power charges.

National Seniors recommends:

- **mandating that all residential parks establish Evacuation Plans; and**
- **establishing separate electricity meters for all residents.**