



# **Residential Park Living:**

**Finding the Problems, Looking for Solutions**



# Contents

Foreword.....	1
The Residential Parks Survey: A Survey Report.....	3
Executive Summary.....	5
1.0 Introduction.....	7
2.0 Sample .....	8
3.0 Detailed Findings.....	9
Improving the Governance of Residential Parks: ARPRA's Position .....	43
Key Issue 1: Licensing of Park Operators .....	45
Key Issue 2: Education of Park Operators .....	51
Key Issue 3: Rent Increases.....	53
Improved Disclosure.....	65
Dispute Resolution Mechanisms .....	67
Park Rules .....	70
Sale of Dwellings.....	72
Assignment of Site Agreements .....	77
Security of Tenure.....	79
Greater Simplicity and Certainty.....	83
Emerging Issues.....	91
Shared Equity Agreements .....	91
Use of Parks as Crisis Accommodation .....	99
Parks Exclusively for Over-55s .....	99
Shift from Caravans to Manufactured Homes .....	100
Other Issues Not Covered in the Discussion Paper.....	101
Mail Facilities .....	101
Site Boundaries .....	101
Site Agreements .....	102
Electricity and Penalties .....	102
Penalties.....	103

Water Charges for Permanent Residents.....	103
Other Changes to the Wording of the Act.....	110
Appendix: The Survey Questionnaire .....	113

## **Foreword**

This review takes place against the backdrop of significant change in the nature of the residential parks industry. The consequent termination of permanent residencies on a large scale has highlighted the inherent insecurity of this form of housing under the present regime.

It should be noted that the Residential Parks Act fits within the framework of consumer protection legislation. It is aimed at balancing the rights and responsibilities of the different parties, i.e., the residents and the operators of residential parks, and at ensuring appropriate means of resolving disputes. It is not the function of such legislation to further the economic interests of the industry. However, industry bodies have argued that the legislation should include such objectives to encourage the growth and viability of the industry. This is fundamentally to misunderstand the function of consumer protection legislation, which is simply to define the rights and responsibilities referred to, to provide mechanisms for dispute resolution, and, in particular, to adequately protect the interests of the weaker party—the consumers—in such a way as to ensure they are not disadvantaged in the negotiations and contractual arrangements that characterise the sector.

It should be clear that secure and affordable housing within the residential parks space is not just a commodity exchanged in the marketplace. The home and hearth are, after all, fundamental human rights and necessities, and legislation such as the Residential Parks Act should be appropriately amended to recognise these fundamental rights.

The Affiliated Residential Park Residents Association (ARPRA) welcomes the opportunity to be involved with all residential park stakeholders in an open and transparent dialogue. We would like to acknowledge the dedication and commitment of the state executive members, the executive members of NAPRA, the Mid Coast Tenants Advice and Advocacy Service, and all the residents for their valued contribution to this report. We also commend the Minister, Anthony Roberts, and the former shadow Minister, Greg Aplin, for their commitment to provide residents with a fairer, stronger and easier to understand legislative framework.

Gary Martin  
State President  
ARPRA NSW



# **The Residential Parks Survey**

A Survey Report



## **Executive Summary**

This statewide survey conducted by ARPRA seeks to provide them with basic information about residential parks and their residents. It also attempts to discover how residents view existing residential park policies and government laws.

Through a combination of an online survey and a paper-based questionnaire, information about residents, their experiences in the park, and their opinions on a wide range of residential park-related issues have been gathered.

The survey was quantitative in nature and was given to residents to complete voluntarily. Nearly six thousand residential park residents across New South Wales participated in this study.

### **Key Findings**

The statewide survey asked residential park residents 36 questions about park living. This section provides a summary of key analytical points of the survey.

- The majority of residential park residents are over 55 years old. They are pensioners on a fixed income and are first-time park residents.
- A large segment of respondents pay \$100-\$119 per week in site fees and set aside 30% of their weekly income for rent.
- On top of rent, residents also pay for water and electricity usage. However, a majority do enjoy energy rebates.
- Nearly half of the residents pay their park owners for electricity usage.
- Most also believe that it is the park owner's responsibility to upgrade below-standard electricity or water supplies.
- At least half of the respondents have challenged a rent increase or settled a dispute at the Consumer, Trader and Tenancy Tribunal (CTTT). A rather large segment says the process was either lengthy or confusing and that, without representation, they would not have applied to the Tribunal.
- Most reported that they do not want park operators to have control over their homes or have a say in its sale.

## ARPRA

- Residents have indicated that they want to see changes in the law when it comes to matters revolving around who should apply to the CTTT, who should provide proof as to whether a rent increase is justified or not, and whether the CTTT can impose fines on non-compliant park owners.
- Most believe that park rules apply to both residents and onsite park operators or managers.
- Residents think that site agreements should be automatically assigned once a sale is completed.
- Residents believe that there is a need for Local Councils to inspect parks at least once per year.
- Most feel that some type of residents committee should be compulsory. However, they are evenly divided when it comes to whether said committee should have the authority to make decisions that affect all residents.
- Residents believe that all park operators and managers should be trained in park operations and the Residential Parks Act. Furthermore, they are open to a training program that is based on an operator's qualifications and skills.
- Residents believe that it should be compulsory for park owners to supply required documents to a prospective resident at least ten days before the actual signing of the residential site agreement. They also believe that the public register about a residential park should be available to all would-be buyers.

## 1.0 Introduction

Residential parks now play an important role in maintaining diversity and choice within the Australian housing sector. They are a form of affordable housing for some, a form of retirement housing for others, and the housing option of “last resort” for a number of people. But no matter how residential parks are perceived, one thing is for certain: Good quality, affordable housing is a basic human right—not a luxury.

Although people who live in residential parks are far from insignificant, they are vulnerable to exploitation. People on low or fixed incomes make up a disproportionate number of residential park residents and, as such, many of these people would have nowhere else to turn if they were evicted.

Very little is known about residential parks and the people who call it home. Furthermore, little is known about which matters residents consider most distressing or most pressing.

To try and better understand the needs of residential park residents, ARPRA undertook this survey to gain a deeper insight into the key issues affecting residents and, ultimately, to be able to apply the findings to draft better and fairer legislation.

## 2.0 Sample

A statewide survey was conducted through a combination of online and mail questionnaires from November 2011 to January 2012. The questionnaire data is confidential, and respondents' identities were not disclosed.

Quotas were not set for age, gender, ethnicity or location. Instead, the survey population covered all people in New South Wales who were living in residential parks during the survey period.

A total of 5,466 questionnaires were obtained, indicating an acceptable response rate. Table 1 presents the responses received from every region.

The margin of error for a sample of n=5,466 for a 50 percent figure at the 95 percent confidence level is  $\pm 2.3$ . However, since many people chose not to answer certain questions, percentages were calculated based on the total number of actual responses to individual questions.

**Table 1: Response rate per region**

Regions	Sample %
Albury Wodonga	0.5%
Blue Mountains	0.5%
Central Coast	5.3%
Great Lakes (Karuah-Tuncurry)	5.2%
Hunter	2.9%
Illawarra	11.0%
Mid North Coast (Taree-Coffs Harbour)	23.9%
Newcastle	5.5%
North Coast (Coffs to Tweed)	4.0%
Port Stephens	19.4%
South Coast	3.1%
Sydney	1.9%
Tweed Coast	17.2%
Western NSW	0.3%

Because a number of respondents (0.6%) skipped the question, the margin of error for the sample (n=5466) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

### 3.0 Detailed Findings

---

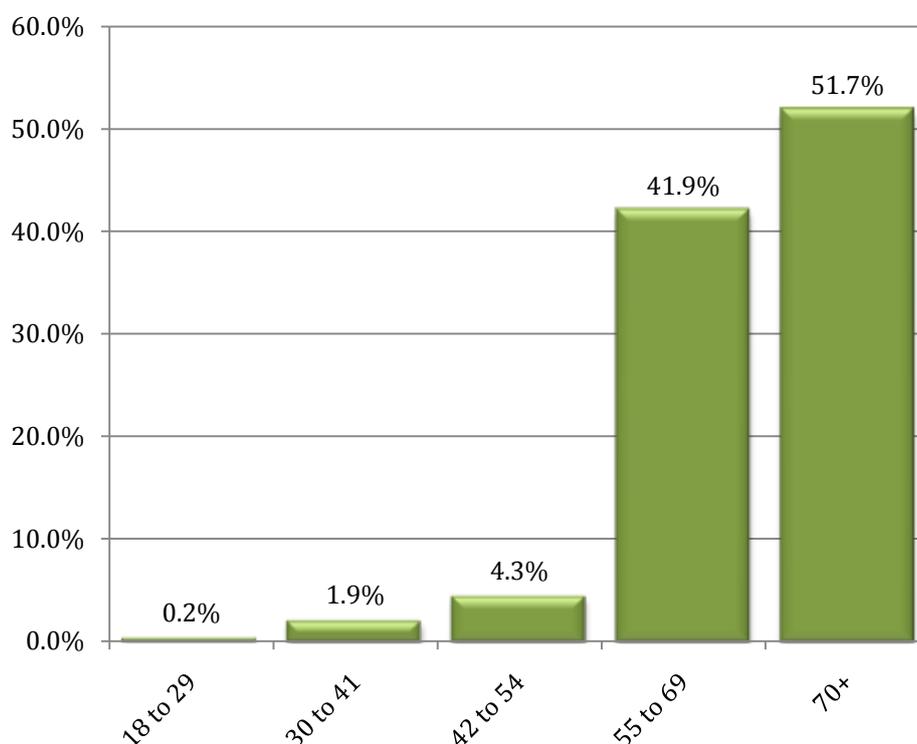
*This section creates a basic demographic profile of residential park residents.*

---

The quantitative survey asked respondents to disclose their age, and Figure 1 presents the age distribution of the sample.

More than half of residential park residents (51.7%) in New South Wales are 70 years old or older, followed by respondents in the 55-to-69-years-old category at 41.9%. Only 0.2% of residents are between the ages of 18 and 29, making it the smallest demographic in residential parks.

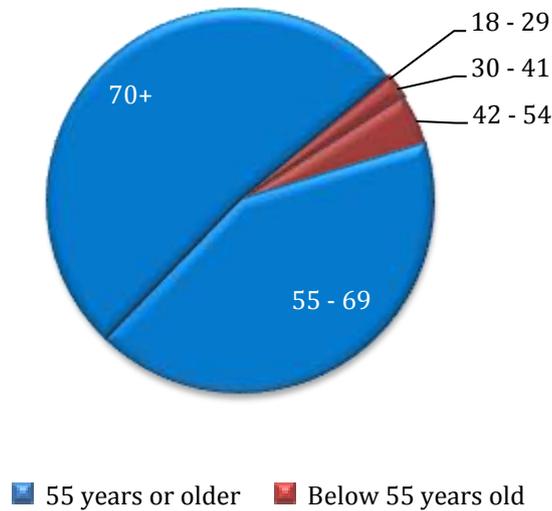
**Figure 1: Age distribution in residential parks**



Because a number of respondents (0.3%) refused to state their age, the margin of error for the sample (n=5450) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

Further examination of the data reveals that most residential park residents (93.6%) are 55 years old or older. Figure 2 illustrates just how large the 55-and-over population is in residential parks.

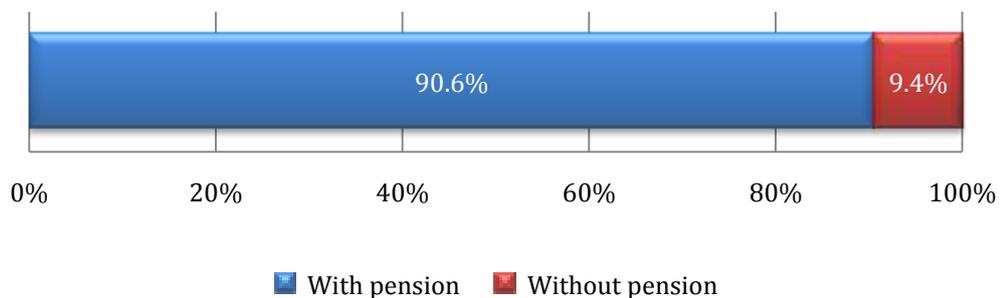
**Figure 2: Segment of residents who are 55 years old or older**



Respondents were also asked if they were currently receiving a pension from the Federal Government, and these results are shown in Figure 3.

90.6% of the respondents answered this question in the affirmative. This result is directly proportional to the percentage of over-55 (and presumably pension-eligible) residents in residential parks. This percentage clearly indicates that the majority of the residents are on a fixed income.

**Figure 3: Percentage of pensioners**



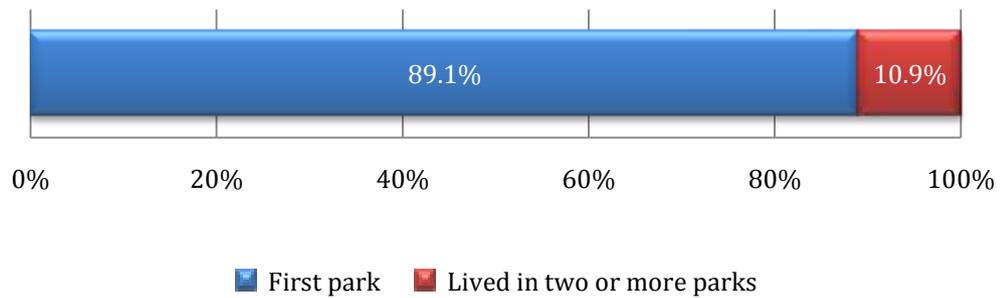
Because a number of respondents (1.2%) did not answer the question, the margin of error for the sample (n=5412) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

89.1% of the respondents also claim that this is the first time they have lived in a residential park, indicating that residents rarely move out of one residential park only to move into another.

Only one in ten residents (10.9%) has experienced living in two or more residential parks.

Figure 4 presents the data from the survey.

**Figure 4: Percentage of first-time park residents**



Because a number of respondents (0.7%) chose not to answer the question, the margin of error for the sample (n=5430) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

---

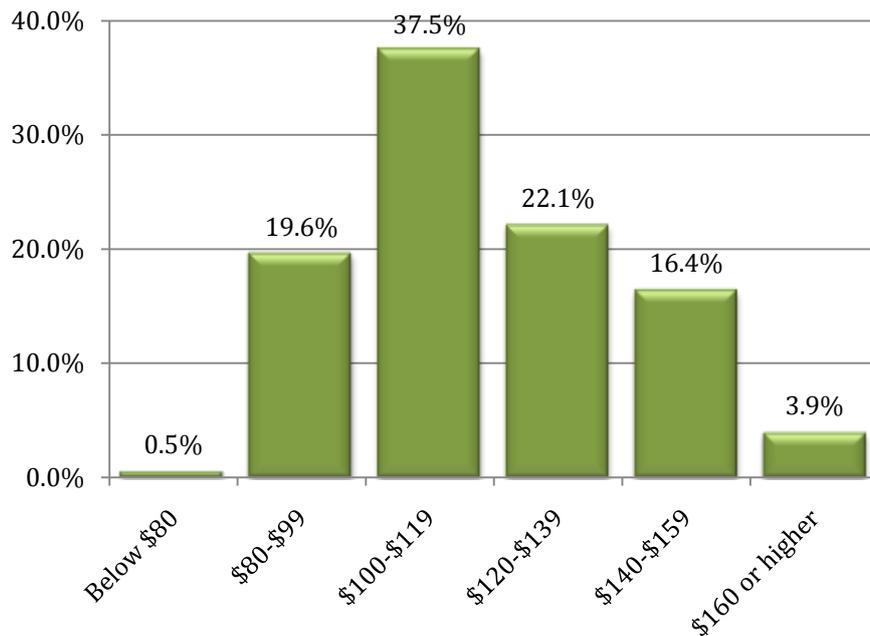
*This section focuses on respondents' site fees and their opinions on how rent should be affected by the Sydney CPI.*

---

The survey asked people how much they pay in site fees, and these results are presented in Figure 5.

Results indicate that more than a third of residential park residents (37.5%) pay anywhere from 100 to 119 dollars per week in site fees (or “rent”). 22.1% of the respondents pay 120 to 139 dollars per week, while 19.6% shell out 80 to 99 dollars each week on site fees. Less than 1% of the survey sample (0.5%) has weekly site fees below 80 dollars.

**Figure 5: Weekly site fees**

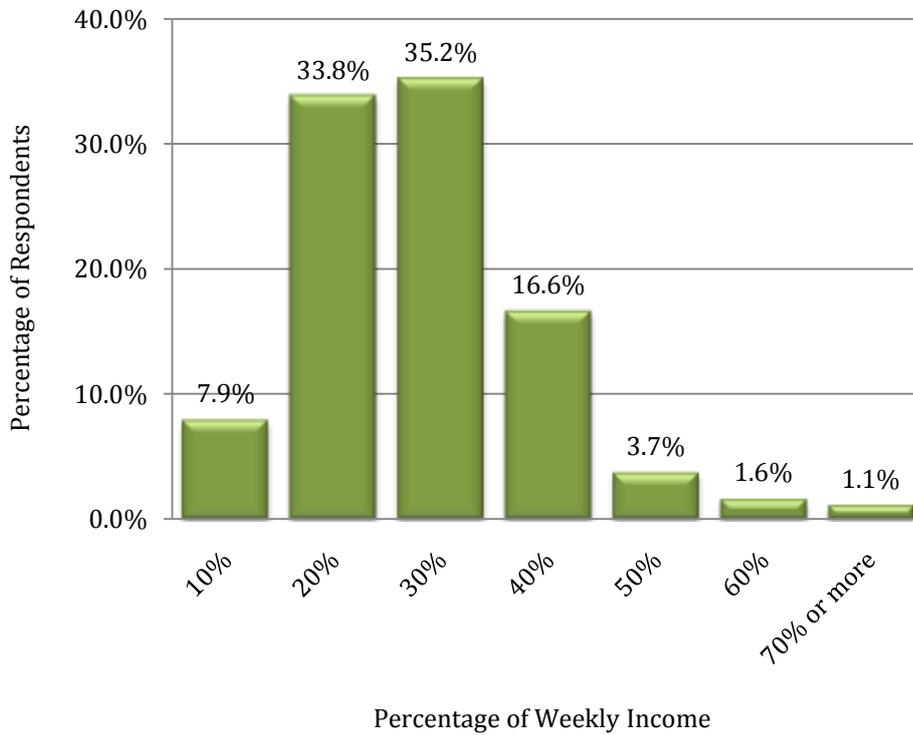


Because a number of respondents (1.4%) skipped the question, the margin of error for the sample (n=5390) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

The survey population was then asked to estimate what percentage of their weekly income goes towards paying for site fees, and the results are shown in Figure 6.

35.2% of the 4,996 residents who answered this question report that around 30% of their weekly earnings are set aside for site fees, while those who say that 20% of their income goes to rent are a close second at 33.8%. The third largest segment (16.6%) allocates 40% of their weekly income for rent.

**Figure 6: Percentage of weekly income going towards site fees**

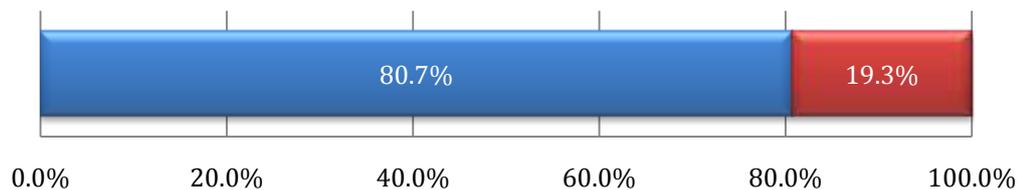


Because a number of respondents (8.6%) refused to answer the question, the margin of error for the sample (n=4996) is  $\pm 2.4\%$  for a 50% figure at the 95% confidence level.

Respondents were also asked whether increases in site fees should be based solely on the Sydney Consumer Price Index (CPI), and Figure 7 presents the respondents' opinions.

According to the survey, the majority of the respondents (80.7%) agree that rent increases should be based exclusively on the Sydney CPI. Meanwhile, 19.3% think that site fees should be independent of the Sydney CPI. There is, however, not enough data to determine whether this percentage of the sample thinks that rent increases should be below or above the Sydney CPI or that other indices should also be considered.

**Figure 7: Agrees that site fee increases should be based on the Sydney CPI**



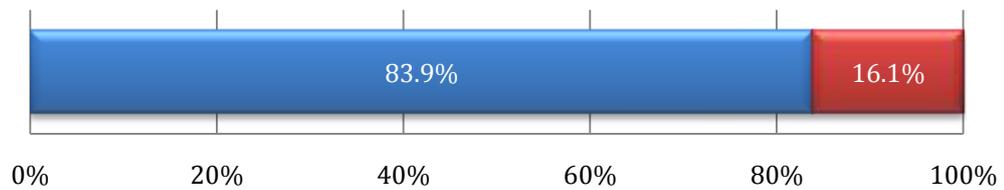
- Yes, it should be based on the Sydney CPI.
- No, it should not be based on the Sydney CPI.

Because a number of respondents (5.9%) did not answer the question, the margin of error for the sample (n=5144) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

At this time, it is the residents who have to apply to the CTTT in order to fight a rent increase higher than the Sydney CPI. However, based on the survey, 83.9% of residential park residents believe that it should be the park owner’s responsibility to apply to the Tribunal to determine if the increase is justified. Meanwhile, 16.1% of the sample disagrees that such a change to the current process is necessary.

Figure 8 presents the data from the survey.

**Figure 8: Agrees that the park owner should be the one to apply to the Tribunal for an above-CPI increase**



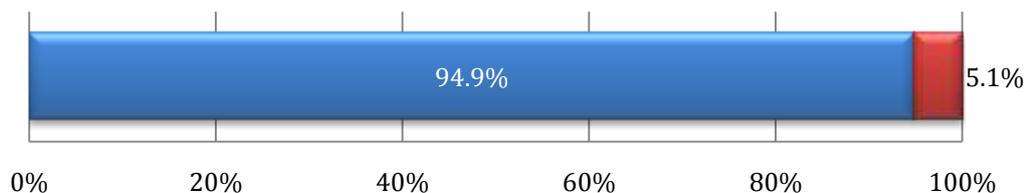
- Yes, the park owner should be the one to apply to the Tribunal.
- No, the park owner should not be the one to apply to the Tribunal.

Because a number of respondents (2.9%) chose not to answer the question, the margin of error for the sample (n=5308) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

In the Residential Parks Act, residents carry the burden of proving that a rent increase imposed by a park owner is excessive.

Figure 9 clearly shows that the majority of the respondents (94.9%) feel that the onus of proof should be reversed and that it should become the park owner's responsibility to provide evidence that his or her expenses justify a site fee increase higher than the Sydney CPI.

**Figure 9: Agrees the onus of proof should be reversed**



- Yes, it should be reversed.
- No, it should not be reversed.

Because a number of respondents (3.1%) skipped the question, the margin of error for the sample (n=5297) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

---

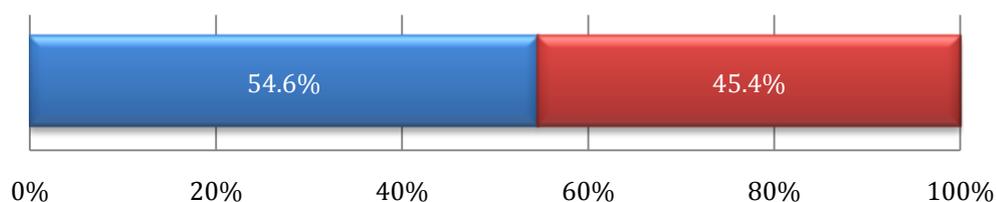
*This section looks into the survey sample's perceptions of and experiences at the Tribunal.*

---

The survey asked respondents whether they have fought a rent increase or have brought any matter before the Tribunal in the past.

Figure 10 shows the proportions of respondents with and without Tribunal experience. According to the survey, the majority of residential park residents (54.6%) have fought an increase or settled a dispute at the CTTT.

**Figure 10: Proportion of residents who have fought an increase or settled a dispute at the Tribunal**



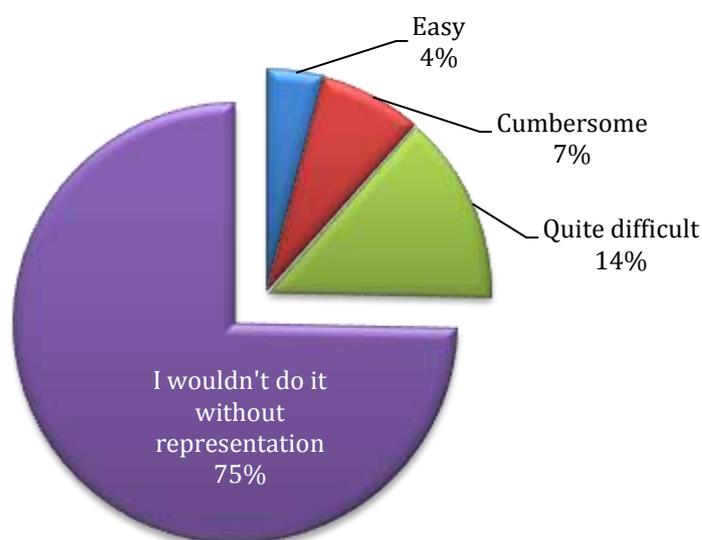
- Yes, I have been to the Tribunal.
- No, I have not been to the Tribunal.

Because a number of respondents (2.5%) refused to answer the question, the margin of error for the sample (n=2931) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

Respondents were then asked how they found the current Tribunal process, and Figure 11 shows the results. The base respondents for this question are the 2,931 residential park residents who have previously gone to the Tribunal.

Nearly three quarters of the base respondents (74.6%) say they would not recommend going to the Tribunal without proper representation. 13.8% of residents also believe that the process is quite difficult, while 7.4% feel it is cumbersome. Only 4.1% of those surveyed find the proceedings easy.

**Figure 11: Perception of the current Tribunal process**



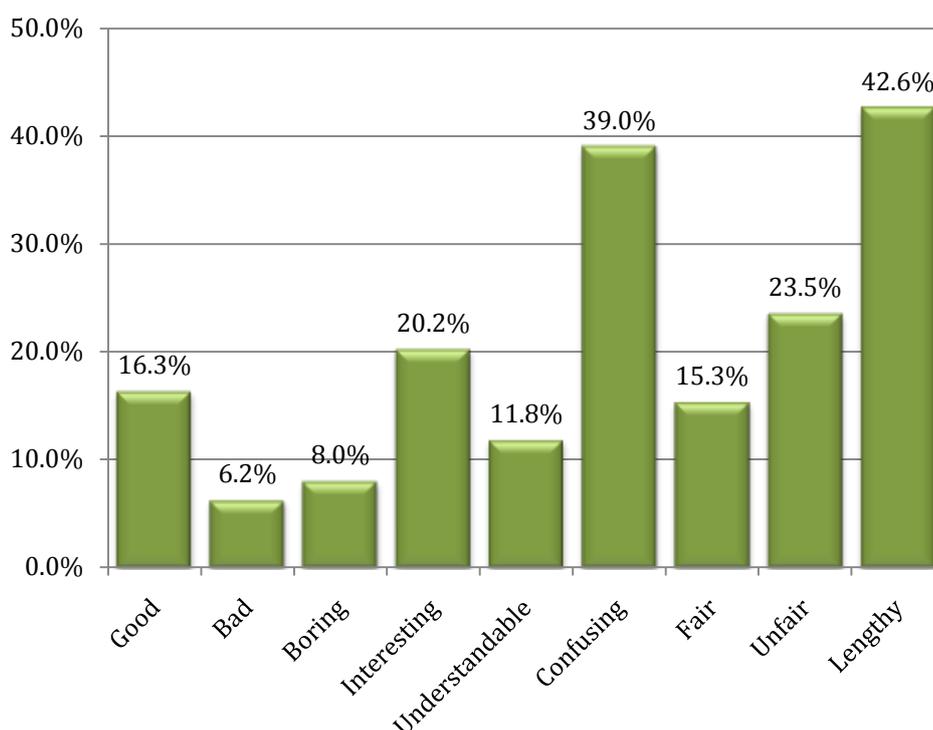
Base: 2,931 respondents who indicated that they have fought a rent increase in the Tribunal

Because a number of respondents (3.7%) did not answer the question, the margin of error for the sample (n=2882) is  $\pm 3.2\%$  for a 50% figure at the 95% confidence level.

Figure 12 shows what words residents feel best describe their overall experience at the Tribunal. Each respondent was allowed to choose as many words as he or she wishes, as long as these words truly reflect his or her Tribunal experience.

At 42.6%, “lengthy” is the word most residents equate with their time at the Tribunal. Upon further examination of the data, most respondents choose to portray their experiences negatively. For example, approximately four in ten residents (39%) characterise their experience as “confusing”, whereas only one in ten (11.8%) describes it as “understandable”. 23.5% remember the process to be “unfair”, while only 15.3% consider it to be “fair”. However, more residents do describe the experience as “interesting” (20.2%) rather than “boring” (8%) and “good” (16.3%) rather than “bad” (6.2%).

**Figure 12: Description of Tribunal experiences**



Base: 2,931 respondents who indicated that they have fought a rent increase in the Tribunal

Because a number of respondents (4.1%) chose not to answer the question, the margin of error for the sample (n=2900) is  $\pm 3.2\%$  for a 50% figure at the 95% confidence level.

---

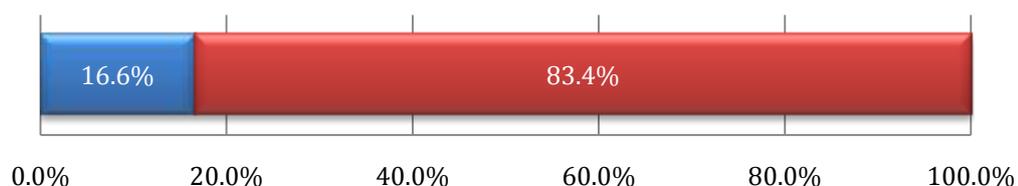
*This section examines park facilities and park rules and regulations.*

---

Park rules often dictate what a person can do to his or her home, and residential park residents are often told that they cannot paint their homes a certain colour or that they cannot install their desired awnings or fittings. Respondents were asked if they feel park owners should have such control over their homes, and Figure 13 illustrates the results.

Of those who took part in the survey, 83.4% think that park owners should not have any say over what they can or cannot do to their homes.

**Figure 13: Agrees park owners should have control over what residents can do to their homes**



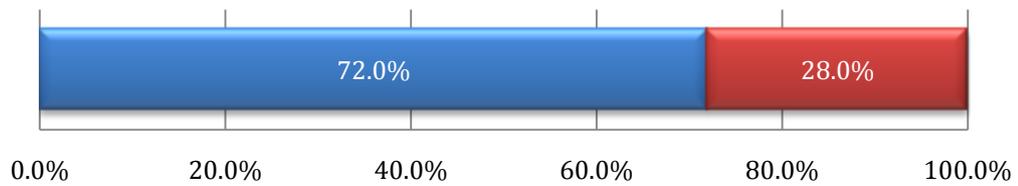
- Yes, park owners should have control over what residents can do to their homes.
- No, park owners should not have control over what residents can do to their homes.

Because a number of respondents (3.5%) skipped the question, the margin of error for the sample (n=5275) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

On the other hand, roughly seven in ten respondents (72%) feel that park owners should be allowed to control the type of pets allowed in residential parks.

Figure 14 presents the survey data.

**Figure 14: Agrees park owners should have control over the types of pets residents can have**



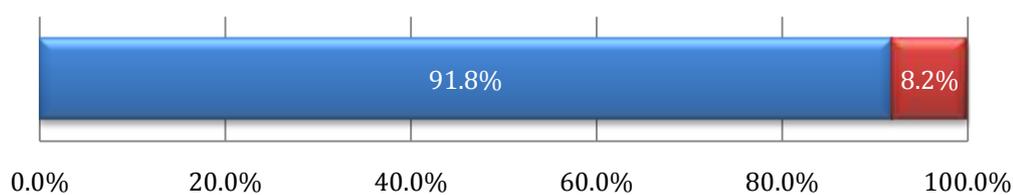
- Yes, park owners should have control over pets allowed in the park.
- No, park owners should not have control over pets allowed in the park.

Because a number of respondents (5.1%) refused to answer the question, the margin of error for the sample (n=5190) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

Under the Australia Post Act, people who live outside residential parks have the right to have a secured mail facility. However, people living in residential parks are not afforded the same privileges. Most residential park residents have to make do with shared letter boxes or open pigeonholes, which often lead to mail security issues.

As shown in Figure 15, the majority of the survey population (91.8%) believes that residents should have individual private letter boxes for incoming mail.

**Figure 15: Agrees residents should have individual private letter boxes**



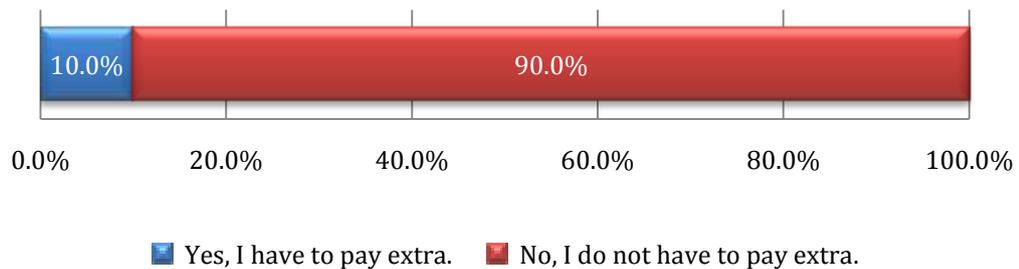
- Yes, residents should have individual private letter boxes.
- No, residents should not have individual private letter boxes.

Because a number of respondents (3.3%) did not answer the question, the margin of error for the sample (n=5286) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

The survey also attempts to establish the proportions of residents who have to pay for the use of park amenities (e.g., bowling greens, pool, community hall, etc.) on top of their site fees, and Figure 16 shows the results.

According to the survey, the majority of respondents (90%) enjoy the use of park facilities without extra charges.

**Figure 16: Percentage of residents who pay extra to use park facilities**



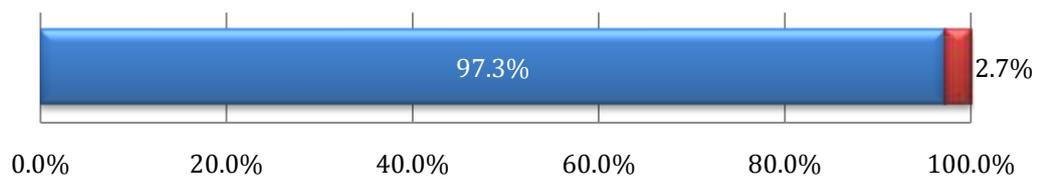
Because a number of respondents (5.6%) chose not to answer the question, the margin of error for the sample (n=5160) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

The survey sample was also asked if live-in owners or managers should be made to abide by park rules and regulations.

Most residents (97.3%) believe that owners and managers who reside onsite should also follow the residential park's rules—just like any other resident. Only a very small segment of the respondents (2.7%) believe that such policies do not apply to owners or managers.

Figure 17 presents the opinion of the respondents.

**Figure 17: Agrees live-in owners or managers should abide by park rules**



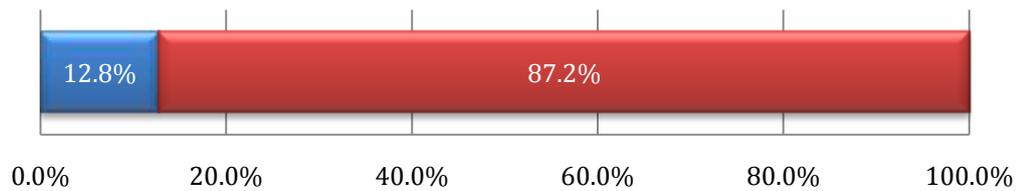
- Yes, live-in owners or managers should follow park rules.
- No, live-in owners or managers should not have to follow park rules.

Because a number of respondents (3.8%) skipped the question, the margin of error for the sample (n=5259) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

Meanwhile, many residents have complained about park owners who intervene during home sales. To determine whether the problem was a widespread one or just isolated incidents, the survey sample was asked if they have experienced such intrusion in the past.

As shown in Figure 18, only one in ten (12.8%) have indicated that they have encountered interference in a home sale by a park owner.

**Figure 18: Percentage of residents who have experienced interference in a home sale by a park owner**



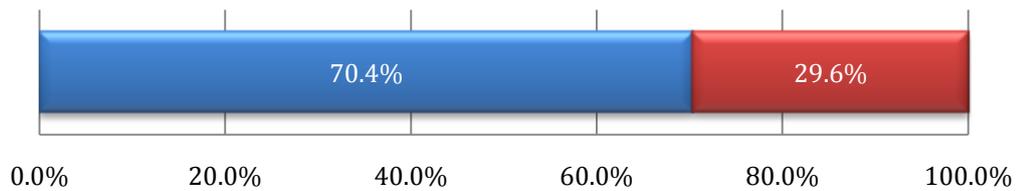
- Yes, I have experienced interference in a home sale by a park owner.
- No, I have not experienced interference in a home sale by a park owner.

Because a number of respondents (6.4%) refused to answer the question, the margin of error for the sample (n=5117) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

Respondents were then asked if they first had to see the manager before buying a pre-loved home, and Table 14 presents the data from the sample.

Of the 4,528 residents who answered this question, 70.4% did meet the manager first before acquiring the home. These numbers are especially significant since no legislation exists that necessitates a prospective buyer to speak with a manager in order to purchase a home.

**Figure 19: Percentage of residents who met with the manager before buying a pre-loved home**



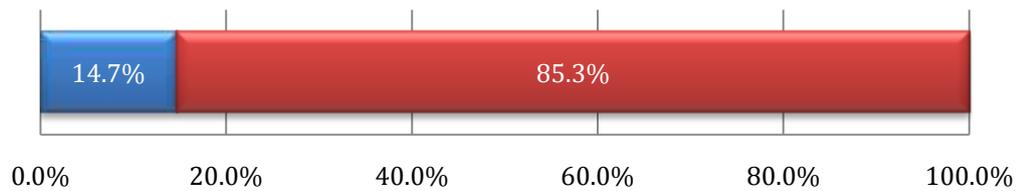
- Yes, I met with the manager before buying a pre-loved home.
- No, I did not meet with the manager before buying a pre-loved home.

Because a number of respondents (20%) did not answer the question, the margin of error for the sample (n=3623) is  $\pm 2.5\%$  for a 50% figure at the 95% confidence level.

There are ongoing issues with park owners who interfere in the sale of a home by objecting to certain would-be residents (e.g., buyers whose ages are below 55) from purchasing. Respondents were then asked if a park owner should be able tell you whom you can or cannot sell your home to.

As shown in Figure 20, most residents (85.3%) believe that a park owner should not have a voice in private home sales.

**Figure 20: Agrees park owners can have a say regarding the person to whom you sell your home**



- Yes, park owners do have a say in whom you sell your home to.
- No, park owners do not have a say in whom you sell your home to.

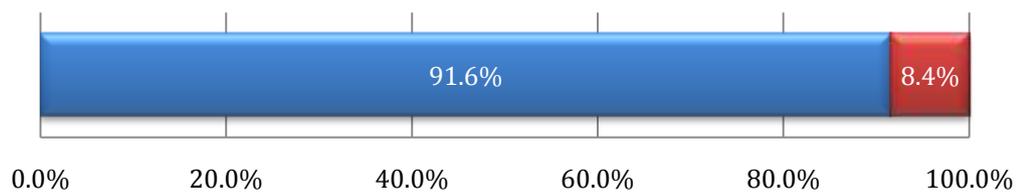
Because a number of respondents (4.3%) chose not to answer the question, the margin of error for the sample (n=5263) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

The current law states that, in a case of a home sale, a park owner cannot unreasonably refuse the assignment of a site agreement to the new homeowner. However, many have complained that some park owners discourage such assignments.

When asked about this issue, nine in ten respondents (91.6%) believe that the transfer of site agreements to the buyer should be automatic.

Figure 21 presents the data from the sample.

**Figure 21: Agrees assignments of site agreements should be automatic**



- Yes, assignment of site agreements should be automatic.
- No, assignment of site agreements should not be automatic.

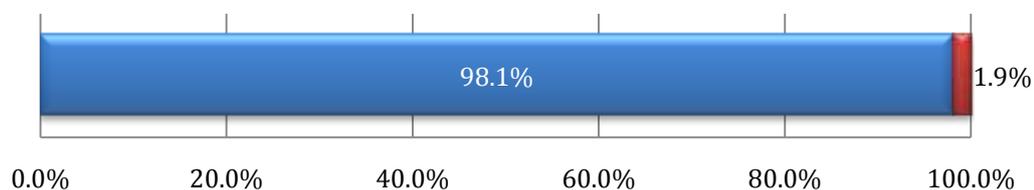
Because a number of respondents (6.9%) skipped the question, the margin of error for the sample (n=5089) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

At present, when the Tribunal finds that the park owner has committed an offence, the matter is referred back to the Office of Fair Trading (OFT) for the application of the penalty. However, it has been found that penalties are rarely enforced after being referred back to the OFT.

Respondents were then asked if they thought the Tribunal should be empowered to impose substantial fines on the park owner if he or she fails to comply with orders of the CTTT.

As shown in Figure 22, 98.1% of residential park residents believe that the Tribunal should be allowed to penalise non-compliant park owners.

**Figure 22: The CTTT should be allowed to fine non-compliant park owners**



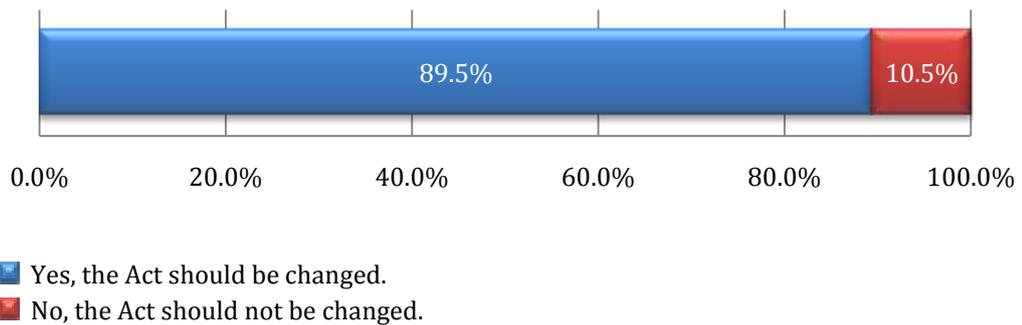
- Yes, the Tribunal should be allowed to fine non-compliant park owners.
- No, the Tribunal should not be allowed to fine non-compliant park owners.

Because a number of respondents (4.3%) refused to answer the question, the margin of error for the sample (n=5231) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

Furthermore, respondents were asked if the Residential Parks Act should be amended so that the Tribunal, upon application, would be able to impose penalties without having to refer the matter back to the Commissioner for Fair Trading. Approximately nine out of ten residents (89.5%) believe that such changes to the law are necessary.

Figure 23 presents the data from the sample.

**Figure 23: Agrees the Residential Parks Act should be changed to allow the CTTT to impose penalties**



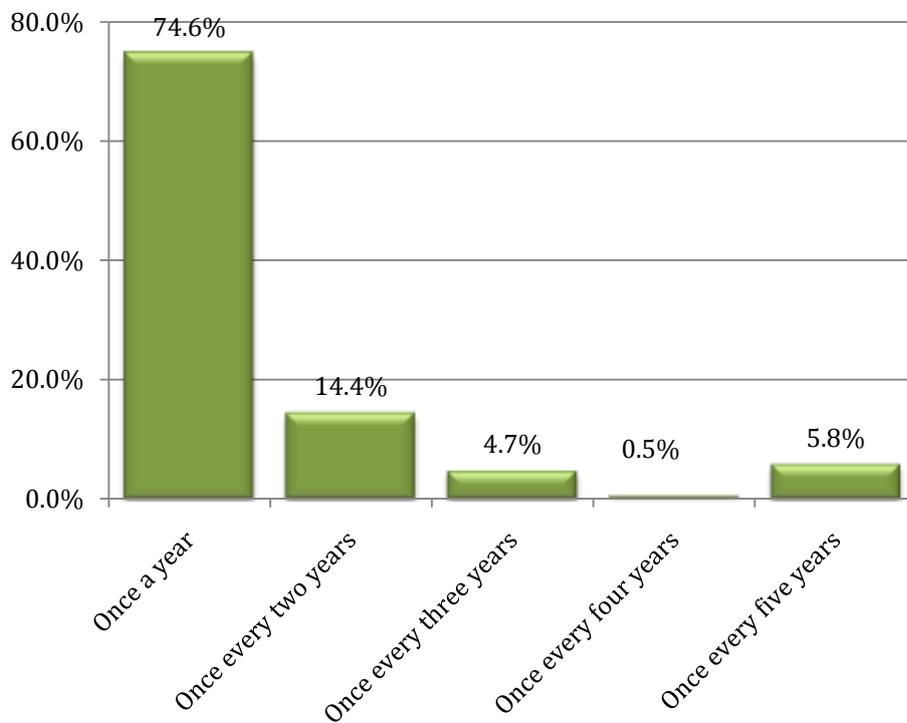
Because a number of respondents (12.8%) did not answer the question, the margin of error for the sample (n=4767) is  $\pm 2.4\%$  for a 50% figure at the 95% confidence level.

Many have become increasingly aware that Local Councils have not been inspecting parks on a periodic basis and that the irregular visits have led to non-compliance.

In the survey, the sample was asked how often the Local Council should check residential parks, and Figure 24 presents the results.

Approximately seven in ten residents (74.6%) would like park inspections to become an annual occurrence, while 14.4% recommend an inspection every two years. Only 5.8% of the respondents are satisfied with the current inspection schedule of once every five years.

**Figure 24: Preferred frequency of Local Council inspection**



Because a number of respondents (5.3%) chose not to answer the question, the margin of error for the sample (n=5233) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

---

*This section takes a look at park utilities and how residents pay for them.*

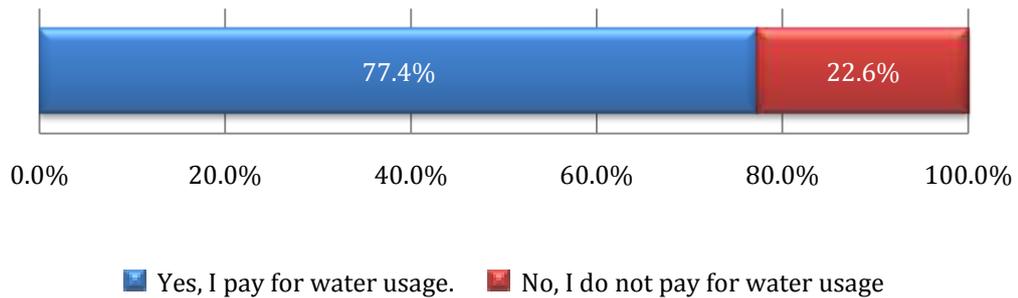
---

The survey attempts to determine the proportion of residential park residents whose electricity and/or water bills are components of their site fees. Respondents were then asked if they paid for their water or electricity usage. According to the survey, 77.4% of the respondents pay for water, while 96.1% pay for electricity.

Although most do pay for their utilities separately, more people (22.6%) have their water bills included in their site fees, compared to the 3.9% whose electricity bills are included in their rent.

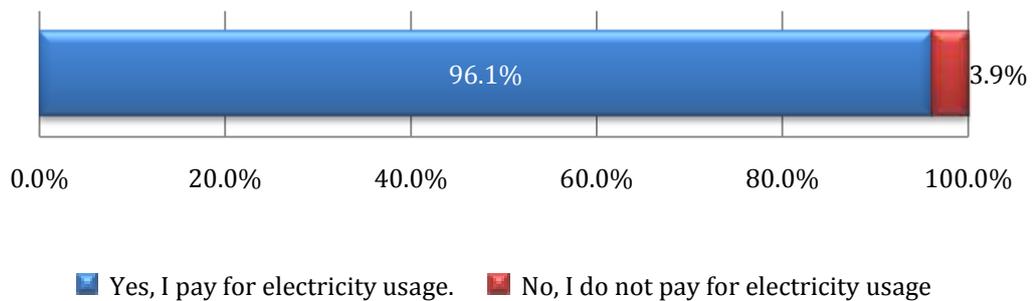
Figures 25 and 26 present the data from the sample.

**Figure 25: Percentage of residents who pay for water**



Because a number of respondents (3.2%) skipped the question, the margin of error for the sample (n=5292) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

**Figure 26: Percentage of residents who pay for electricity**

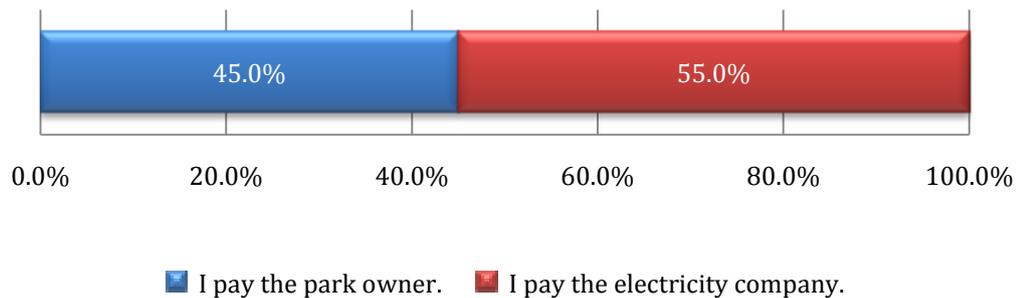


Because a number of respondents (2.8%) refused to answer the question, the margin of error for the sample (n=5333) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

Figure 27 shows that more than half of residential park residents (55%) that do shell out for electricity pay the electric company directly, while 45% pay their park owners.

These results also imply that at least four in ten residents are not entitled to Energy Accounts Payment Assistance (EAPA) vouchers, because payments made to park owners are not included in this scheme.

**Figure 27: Percentage of residents who pay the electricity company or the park owner for electricity**



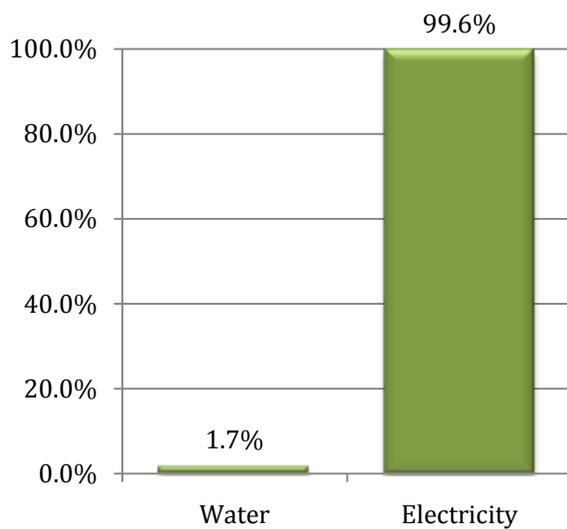
Because a number of respondents (2.35%) did not answer the question, the margin of error for the sample (n=5343) is  $\pm 2.4\%$  for a 50% figure at the 95% confidence level.

Those surveyed were also asked if they get rebates for their utility payments. Respondents were allowed to choose water, electricity or both, and Figure 28 presents the data from the sample.

99.6% of residents indicate that they have electricity rebates, while 1.7% report that they have water rebates. However, since no residential park customer is entitled to a pensioner water rebate, it is interesting to note that a few respondents do claim to enjoy such savings.

Finally, it should be noted that 33.2% of the 5,466 respondents did not answer this question. However, there is no sufficient data to determine if this segment of the respondents skipped the question because they do not get water or electricity rebates.

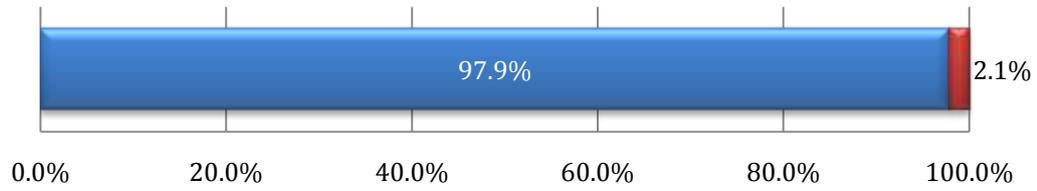
**Figure 28: Percentage of residents with rebates for utility payments**



Because a number of respondents (33.2%) chose not to answer the question, the margin of error for the sample (n=3663) is  $\pm 2.6\%$  for a 50% figure at the 95% confidence level.

Under the current legislation, there is no mechanism in place that will require the park owner to upgrade substandard infrastructure. Respondents were then asked to weigh in on the issue, and Figure 29 plainly shows that the majority of residential park residents (97.9%) believe that park owners should improve their electricity or water supply if they are found to be unsatisfactory.

**Figure 29: Agrees park owners should upgrade their below-standard electricity or water supplies**



- Yes, they should upgrade substandard supplies.
- No, they should not have to upgrade substandard supplies.

Because a number of respondents (3.5%) skipped the question, the margin of error for the sample (n=5275) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

---

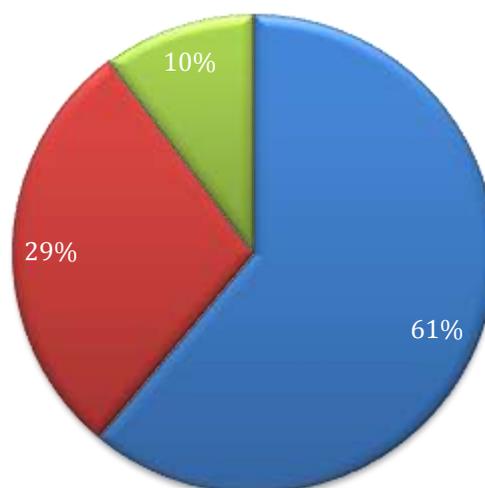
*This section looks into the residents' opinions on residential park residents committees.*

---

Some have said that there is some benefit to having a residents committee, primarily for dispute resolution. According to the survey, a total of 89.8% of residents agree that there are advantages to having residential committees and, therefore, that some sort of committee should be in place. These results are reflected in Figure 30.

Roughly six in ten (61.1%) think that such a committee should be composed of residents only, while approximately three in ten (28.7%) believe that a liaison committee made up of both residents and park managers would be better. 10.2% believe that residents or liaison committees should not be mandatory.

**Figure 30: Agrees some type of residents committee should be compulsory**



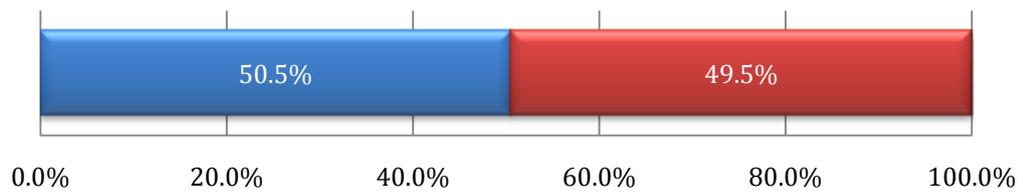
- Yes, we should have a committee composed of residents only.
- Yes, we should have a committee composed of both residents and park managers.
- No, a committee should not be mandatory.

Because a number of respondents (4.2%) refused to answer the question, the margin of error for the sample (n=5237) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

Residents were then asked if they wished to place decision-making in the hands of fellow residents who vote in the majority, and Figure 31 presents the results.

Survey respondents are divided when it comes to how much power a resident committee can wield. 50.5% believe that resident committees should have the power to make decisions that affect all residents, while 49.5% believe the opposite.

**Figure 31: Agrees committees should be able to make decisions that affect all residents**



- Yes, committees should be able to make decisions that affect all residents.
- No, committees should not be able to make decisions that affect all residents.

Because a number of respondents (4.9%) did not answer the question, the margin of error for the sample (n=5199) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

---

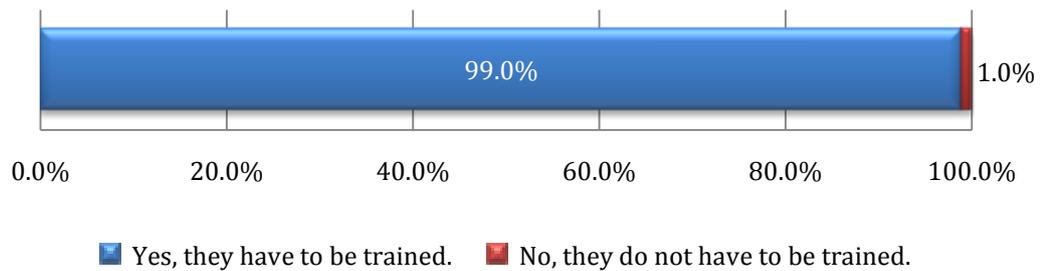
*This section explores possible training for residential park owners and managers.*

---

Respondents were asked if park operators and managers should have some type of certification training that would further their knowledge on residential park operations and the Residential Parks Act.

As shown in Figure 32, there is overwhelming support for such training. In fact, 99% of residents believe it is a good idea to have fully certified park operators and managers.

**Figure 32: Agrees park managers and operators should be trained in residential park operations**



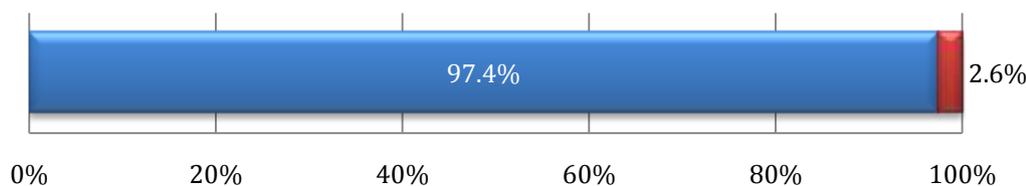
Because a number of respondents (4.1%) chose not to answer the question, the margin of error for the sample (n=5296) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

Respondents were then asked if such a training course should take into account a park owner’s current qualifications and skills as opposed to a blanket approach that required every operator to do the full training course.

Most residential park residents (97.4%) say they would support a training course based on a sliding scale that would consider the park operator's knowledge of the Residential Parks Act and council requirements, their qualifications and skills, and the number of years they have been in the industry.

Figure 33 presents the data from the sample.

**Figure 33: Percentage of residents who would support the introduction of a training course based on a sliding scale**



- Yes, I would support a training course based on a sliding scale.
- No, I would not support a training course based on a sliding scale.

Because a number of respondents (5.3%) skipped the question, the margin of error for the sample (n=5177) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

---

*This section examines how information is shared with prospective residents.*

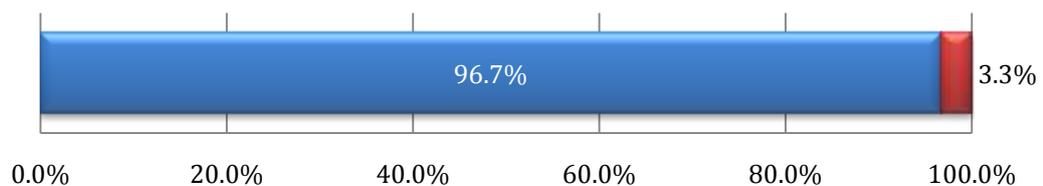
---

The Residential Parks Act Section 73(3) says that certain documents (e.g., park rules, question-and-answer materials, information on a resident’s right to occupy the site on a leasehold-basis, etc.) must be given to a resident when signing a residential site agreement, but many problems still arise from buyers signing on the dotted line without knowing all the facts.

Residents were asked if the Act should be changed to make it compulsory for a park owner to supply these documents to a prospective resident at least ten days before he or she signs the site agreement. Most residents (96.7%) feel that such a “cooling off” period would be helpful to potential residents, because it would give them time to seek independent legal advice.

Figure 34 illustrates the data from the sample.

**Figure 34: Agrees that park owners should provide mandatory documents ten days before signing a site agreement**



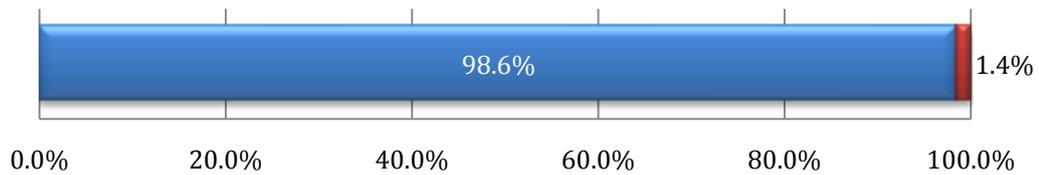
- Yes, park owners should provide all required documents ten days before the buyer signs the agreement.
- No, park owners should not have to provide all required documents ten days before the buyer signs the agreement.

Because a number of respondents (5.6%) refused to answer the question, the margin of error for the sample (n=5160) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

Respondents were also asked if information such as the park owner’s history (e.g., how long they have been in the industry, what previous parks they have owned, how many disputes they may have had at the CTTT, etc.) should be made available to the public.

As presented in Figure 35, most residents (98.6%) agree that the public register about a park, along with contact details of the park’s residents committee, should be readily available to prospective residents so they can make an informed choice about which park they wish to enter.

**Figure 35: Agrees that a prospective resident should be allowed to view the public register about a park or contact an association that could provide relevant information**



- Yes, these should be available to the public.
- No, these do not have to be available to the public.

Because a number of respondents (4.3%) did not answer the question, the margin of error for the sample (n=5215) is  $\pm 2.3\%$  for a 50% figure at the 95% confidence level.

---

*This section focuses on other concerns voiced by residents.*

---

The final part of the survey offered respondents the opportunity to share any comments, questions, or complaints that were not directly addressed.

A few comments shared by residents are featured below.

- There needs to be a law to stop park owners (from) using “fear tactics” on older, vulnerable residents. Some live in constant fear of being ejected if they get on the wrong side of management.
- Once a tribunal decision is given, we should not have to go through this very traumatic and unsettling procedure every time the owner wants to put up our rent above CPI.
- Each park needs a sinking fund funded from rents paid annually, e.g., 10% to cover maintenance issues/works. This would protect (the) residents’ assets and (the) owner’s business. (It) should be controlled by a committee established in each park made up of equal number of residents and owner/managers, and (it should be) independently audited annually.
- Please do something to ban Shared Equity and Opportunity Fees.
- I am happy with the way our Village is working and congratulate the owner who runs and owns his Village. I have lived here 12 years and feel very safe in our village.
- The liaison between managers and residents is most important to ensure a happy, well-managed park.
- I am a single pensioner living on the pension with no other income. I came here to live, because it was a cheaper lifestyle that I could afford. If the rent is too high, I don’t know what I will do.

# **Improving the Governance of Residential Parks**

ARPPRA's Position



## **Key Issue 1: Licensing of Park Operators**

“Presently, anybody can be a residential park operator or manager. There is no requirement to hold any qualifications or have any experience to become one.

Majority of park operators do the right thing, treat residents fairly and comply with their legal obligations. However, on occasions residents have voiced concerns over certain park operators harassing, intimidating and acting unconscionably towards them. It is in response to these claims that some stakeholders have called for a system of licensing to be introduced. Licensing is seen as an effective way of ensuring that park operators meet standards, of building confidence in the industry and providing a method of redress against rogue operators. Licensing has the benefit of enabling stakeholders to keep track of who is working in the industry and what their record has been like. A system of licensing also allows government to deal with unacceptable conduct, with options including fines, mandatory training and as a last resort, expulsion from the industry.”

### **Options**

1. Full Licensing
2. Negative Licensing

***“Which option of licensing for park operators do you support and why?”***

### **ARPRA supports Option 2 – Negative Licensing**

While the new register and approvals to operate address the issue of determining who is in the industry, they do not address concerns about the behaviour of those involved. Some residents claim that they are reluctant to take action against their operators for fear of possible harassment and intimidation, the threat of eviction, or the operator retaliating through raising the rent or by some other means. One option could be for the Act to contain a stepped series of sanctions against park operators who fail to comply with their obligations. This could include:

- warning letters for first offences;
- more penalty notice provisions;
- larger fines, particularly for repeat offenders;

## **ARPRA**

- public naming and shaming of those operators with the most complaints each year; or
- restrictions, such as not being involved in sales or not being able to open new parks or sites.

Park operators who repeatedly commit serious offences could be required to appoint a park manager to handle the day-to-day management of the park for a period of time, without any interference. This could address the behaviour issues with minimal impact on the residents living in the park. A similar provision enabling the Commissioner for Fair Trading to direct a landlord to employ an agent to manage their property was part of the recent tenancy law changes.

Another option is to adopt provisions similar to section 57 of the Retirement Villages Act 1999, which prohibits certain persons from being involved in the management or control of a retirement village if, during the last 5 years, they have:

- been convicted of an offence involving physical violence to another person; or
- been convicted of an offence involving fraud or dishonesty; or
- become bankrupt or insolvent or been the director of a company which has been wound up (otherwise than voluntarily).

The Retirement Villages Act also contains a specific obligation on operators to use their best endeavours to ensure that each resident lives in an environment free from harassment and intimidation. Both Victoria and Queensland contain similar provisions against threats, intimidation and coercion by park operators.

A further option could be for the Act to set out a Code of Conduct for park operators covering such matters as unconscionable conduct, conflict of interest and not interfering with the right of residents to quiet enjoyment.

### **ARPRA does not support full licensing.**

The term “park operator” is new. Presently, we have park operators and park managers. According to the discussion paper, a park operator can be the person who owns the land but is not involved with the day to day management of the park, or a park operator, a person who both owns and manages the park. Then we have a park manager.

## ARPRA

It appears that the definition of park operator will be limited to the land owner, and the term park operator will refer to an owner/manager.

So, this is referring to licensing people who both own and manage.

Maybe we are being too literal, but a park operator is described as someone not involved with the day to day management of the park.

So if it is only operators—owner/managers—who are to be licensed, you could have a park operator who does not actively participate in the running of the business and who hires a manager, and neither will need a license. It does not make a lot of sense.

It seems to us that the target here is the management of the park. That is, those who are responsible for the day to day management and all interaction with residents are the ones that need some form of registration, whether they own the park or not.

Each real estate office is required to have a licensee. Real estate licenses represent years of study. Each agent working in an office must be registered with Fair Trading.

### *New Register of Residential Parks*

We think that the new register of residential parks contains enough information for the government to keep track of who owns which park and what their current qualifications are, if any. Running a park does not require the same level of intensive training as a real estate license.

We are more for making sure that those that manage, whether or not they also own, are adequately trained and educated and registered with Fair Trading.

ARPRA believe the licensing administration should be part of Fair Trading, however the penalty should be applied by Consumer, Trader, and Tenancy Tribunal at the time of the hearing, and Fair Trading should retain their involvement of matters that do not appear before the Tribunal.

Industry stakeholders can play a role in improving standards by participating in a consultative forum which could include Fair Trading, the CCIA and ARPRA.

## **ARPRA**

### **Case Study 1**

One park owner has—

Tried to get a new resident to sign an agreement with a term added in which she agrees to relocate her home;

Disrupted residents' committee meetings;

Refused access to after-hours emergency tradespeople;

Refused to erect a community map near the entrance of the park;

Told residents that once emergency services get through the boom gates, it is not their responsibility to ensure they can find the required site;

Told residents they had to pay \$2 each time they wanted to use the pool;

Told residents whose homes were not self-sufficient that they had to pay to use the amenities;

Over-charged some sites for electricity availability;

Served two rent increases a year for five years, each one for around \$2 only, all of which were subsequently found to be invalid;

Subsequently served an increase for \$23, "to teach residents a lesson"; and

Told a Tribunal member the rent increases were timed to coincide with the increases in pensions, so he can "get my little bit of that."

This is a situation that is repeated in too many parks. While ARPRA stresses that the majority of park operators and managers treat their residents fairly and with respect, the government has a responsibility to ensure the protection of all park residents, some of whom number among society's most marginalised citizens. There needs to be a mechanism in place in which park operators and managers are given every chance to improve their knowledge, skills, and treatment of residents. If there is no improvement, there also needs to be a mechanism in place which will ensure their removal from the industry. Registration combined with negative licensing can lead to a "three strikes" approach, which should include retraining and industry expulsion as a last resort.

## ARPRA

**Option 1 – Full Licensing** mentions the Property, Stock and Business Agents' Act 2002. A Certificate IV in Property Services usually takes two years to complete, part time, and can cost thousands. A Certificate of Registration course can be completed within a week if done full-time, less than six months part-time, and costs less than \$500. Modules required are—

*CPPDSM3019A      Communicate with clients as part of agency operations*

*CPPDSM4007A      Identify legal and ethical requirements of property management to complete agency work*

*CPPDSM4008A      Identify legal and ethical requirements of property sales to complete agency work*

*CPPDSM4080A      Work in the real estate industry*

*(seek learning)*

A Certificate of Registration course for residential park operation and management could be devised along the same lines.

### *Role of Industry*

ARPRA also regards industry accreditation of Residential Parks as an integral part of self- regulation. Most parks are now fast becoming an alternative to Retirement Villages. If Retirement Villages need accreditation then so too do caravan parks and manufactured home estates. Many operators in other countries are required by law to be accredited. Australia lags behind the rest of the world in this area.

Accreditation provides caravan parks with a framework of quality business practices in the areas of Business Planning, Risk Management, Environmental Management, Human Resources Management, Marketing and Customer Service. Accreditation provides consumers with an assurance that a business they are dealing with possesses a commitment to quality practices and a high level of customer service.

## ARPRA

Consumer benefits are summarised as having an assurance of:

- Reliability of product and service;
- Consistency of product and service;
- Certainty;
- Security and safety through improved risk management procedures;
- Confidence in product;

as accreditation underpins the process of ensuring that a business will consistently meet and exceed the expectations of the domestic and international consumer. Accreditation encourages customers to confidently expect operators to deliver quality product and services.

For Operators:

A business commitment to quality allows the establishment of the quality management system that improves the overall performance of the park. It identifies key areas for improvement and helps to address and implement these improvements in a logical manner. It encourages the review of current procedures and developing new ones which are more efficient and cost effective.

Industry Standards:

- Underpin risk mitigation and reduce litigation;
- Ensures legal compliance for the business;
- Improve productivity and profitability through good management practices;
- Provide benefits by addressing risk management, OH & S and environmental issues to ensure a safe work place for staff, customer safety and business sustainability.

## Key Issue 2: Education of Park Operators

“A number of stakeholders have identified the need for more training to improve the quality of management within residential parks. Park operators need to know their rights and responsibilities and have the skills to deal with the difficult role of operating a residential park. A clear understanding of the rules helps to prevent conflict by resolving many disputes before they escalate. “

***“Do you think mandatory education of park operators will improve the quality of management within residential parks? If so, in what areas do you think education is most needed?”***

### **ARPRA’s Position:**

ARPRA does not believe that educating the current managers found in some residential parks will improve their management abilities. ARPRA believes that the education of park managers will provide far more long-term benefits than any significant immediate improvement.

Anyone who manages a residential park should be registered with the Office of Fair Trading. The registration should depend on the person completing a TAFE course that centres on the activities and law as it relates to permanent residents, rather than tourism.

Current available courses are heavily weighted towards tourism. The TAFE course, “Caravan Park Supervision” is described as—

*“This course is for people who work or want to work as an assistant caravan park manager or caravan park grounds supervisor. These positions involve a significant level of autonomy and responsibility including the supervision of other employees.*

*You will learn about the caravan park industry and have the opportunity to select electives that focus on caravan park administration, customer service and marketing, leadership and management, parks or grounds maintenance, and computer technology.”*

## ARPRA

TAFE offers courses in caravan park management, but these are diplomas in holiday park and resort management. There appears to be nothing available that educates people on permanent residents and their laws. None of these courses would be even remotely suitable for anyone managing a manufactured home estate.

A new course needs to be developed that focuses on residential park management rather than tourist park management. The laws are different and the responsibilities are different.

Priorities for residential park management training should be—

- familiarisation with relevant legislation
- awareness and needs of park residents
- ethics and professional responsibility
- communication and dispute resolution skills
- basic financial bookkeeping and budgeting
- health and safety issues

Training should be mandatory for anyone who manages, or intends to manage, a residential park.

Current managers can be given an interim registration certificate which is valid for 12 months and may be renewed only once. This means that sometime in the first two years after receiving their interim certificate, they must do the course. Recognition of prior learning (RPL) would be available to current managers. If the manager is also the owner, if they fail to satisfactorily complete the course within two years, they must hire a qualified manager.

This system could then be combined with the idea behind negative licensing. A person who gains too many points, as with a driver's license, gets his or her registration suspended for certain periods of time and not allowed to manage again until they pass a short course.

## **Key Issue 3: Rent Increases**

“Frequent, large or unpredictable rent increases are a major concern to residents. Rent increases are a particularly serious concern for older residents who have retired and are living on fixed incomes.

The immobility of dwellings provides extraordinary leverage for park operators. With their home affixed to the land and costing many thousands of dollars to move residents cannot simply pack up and go elsewhere in response to frequent or high rent increases. This problem is compounded by the fact that residential parks are full in many areas, and even where sites are available operators often refuse to accept older homes. If a resident cannot afford the new rent and tries to sell the home the park’s high rents may make it harder to sell.

It is equally important that park operators can collect rent that is adequate to ensure that their business is sustainable. In the absence of appropriate arrangements, the residential parks sector would be likely to decline.

One of the stated problems with the existing system is that the resident bears the onus of proof, as they are the applicant to the Tribunal. It is argued that this is a difficult burden for residents to overcome due to the lack of access to park expenses and financial documents. A considerable amount of time, research and effort is required to prepare a case. Some residents attend the Tribunal year after year for each new increase. “

### **Options**

1. Fair Trading Assessment
2. reversal of the onus of proof
3. allow pass-throughs
4. recognise future rent increases can be set out in the agreement
5. reverse the 2005 reforms
6. require the operator to apply to the Tribunal if the residents do not consent

## ARPRA

**“Which option, or a combination of options, to improve the process of resolving excessive rent increase claims do you support and why?”**

### **ARPRA’s Position**

ARPRA sees value in a mixture of option 2, 4 & 5. There needs to be a new understanding of the way that Section 57 operates, or is meant to operate. The idea that a resident must have access to the park operator’s expense and other financial documents in order to present their case is misconceived.

Let us explore an example of the reversing the onus of proof.

Current handling of Rental Bond Claims—an example of reversal of the onus of proof.

### **McKillop v Johns (Tenancy) [2002] NSWCTTT 25 (22 March 2002)**

#### **RT 02/02241**

In the above file, the Tribunal found—

*“In the simplest and most fundamental terms a rental bond which is actually paid to a landlord or his or her representative in respect of residential premises (unless expressly excluded under the provisions of the Landlord and Tenant (Rental Bonds) Act) must be paid into the Rental Bond Board. The agreement entered into by the landlord and tenants in this case was not one which was expressly excluded and thus this Act applies to the circumstances and arrangements between the parties. The bond is securely held by a neutral third party i.e. the Board until dealt with under the provisions of the Act. The bond monies lodged are, the property of the tenant(s) and in the normal course, will be returned to the tenant(s) unless and until the landlord establishes a right to receive some or all of that bond money. The Act provides for a number of ways in which this can occur. If the parties can not agree how the bond money is to be distributed (usually at the end of a tenancy), one way to deal with the matter is for a party to bring an application to the Tribunal. When this occurs, the Tribunal is obliged to deal with the application on the evidence presented. Logically, as the bond money was the tenants' money, it should be returned to the tenants unless and until the landlord can establish a right to some or all of the bond money by proving loss or damage. The landlord has the onus of providing such proof.”*

The Tribunal and the law view the lodged rental bond as being the tenant’s money. When a landlord claims the bond and their claim is disputed by the tenant, they must prove to the Tribunal on the balance of probabilities that their claim is justified.

## ARPRA

It does not matter which party lodges the Tribunal application. Tenant or landlord, when exchange orders are made, it is always the landlord that goes first, because he has to prove he is entitled to the tenant's money.

This approach could easily be done with rent increases. It is partly a matter of perception.

The Tribunal could approach rent increase applications in the same manner as rental bond applications. How much a landlord gets from the rental bond depends on the quality of his evidence.

Section 165 of the Residential Tenancies Act requires a landlord to provide evidence of their claim for the Bond within seven days of lodging the claim. This is another way to reverse the burden of proof.

An increase in rent should be treated as a claim for money from the resident.

The park operator effectively wants to alter a term of the agreement (the rent level) and in a dispute (a CTTT hearing) should prove they are entitled to the increase before the increase is granted.

It could work like this—

- Park Operator issues rent increase notice
- Resident disputes the increase and applies to CTTT
- Park Operator is to provide evidence in conciliation to support the increase
- Negotiated agreements can occur, as now.
- If conciliation fails, exchange of evidence orders are made with the park operator required to supply their evidence before the resident.

ARPRA believes that Section 57 should be rewritten to provide greater clarity and direction to both parties. In reversing the onus of proof in this manner, the Tribunal will be able to make more effective use of the *Jones v Dunkel* inference, if the Park Operator fails to provide evidence to support the increase.

## ARPRO

In the case of inadequate evidence, the benchmark should be set to 0. The current rent level is set for a further 12 months.

ARPRO believes that in relation to Option 4, future rent increases can already be set out in the agreement as an additional term. The problem is that their application beyond a fixed term is open to interpretation. Unify the Tribunal's approach to such additional terms, and it is an option that might work, as long as residents retained the right to fight them if there has been a withdrawal or reduction in services and or facilities.

Confusion is created by the Tribunal's lack of regard for the decisions of other members.

As the law is interpretive, applicants are at the mercy of whichever member they get on the day. The confusion starts with Section 53—

*“(6) The rent payable by a resident under a residential tenancy agreement that creates a tenancy for a fixed term must not be increased during the currency of the fixed term unless the amount of the increase, or a method for calculating the amount of the increase, is set out in the agreement.”*

*“(7) A residential tenancy agreement must not set out more than one method of calculating the amount of any increase of rent payable by the resident under the agreement during the currency of the fixed term of the agreement. If more than one method is specified, the method that results in the lowest increase of rent is the applicable method.”*

Some members automatically assume that if an agreement contains an additional term about rent, then it is only pertinent for the currency of the fixed term.

The problem with this approach is that quite a few fixed terms are for less than 12 months, and yet most additional terms refer to increases that occur annually. If the fixed term was for 12 months, and the additional term was supposed to be only relevant for the fixed term, why would they use “annually?”

If the additional term states “the rent is to be increased by CPI on the 1<sup>st</sup> January each year”, but it is a 12 month agreement, how could it possibly be confined to the fixed term?

This ambiguity can be remedied by either clarifying Section 53(7), or by removing fixed terms altogether. Any additional term in an agreement that dealt with rent increases would then logically be available for the whole of the agreement.

## ARPRA

Section 53 (7) can be clarified by—

*CHANGING—*

*“(7) A residential tenancy agreement must not set out more than one method of calculating the amount of any increase of rent payable by the resident under the agreement during the currency of the fixed term of the agreement. If more than one method is specified, the method that results in the lowest increase of rent is the applicable method.”*

*TO—*

*“(7) Any agreement must not set out more than one method of calculating the amount of any increase of rent payable by the resident under the agreement during the currency of the fixed term of the agreement.*

*(8) An additional term that sets out the method of increasing the rent during the currency of a fixed term continues to apply after the expiration of the fixed term, unless the agreement expressly provides otherwise.*

*Note: The method for calculating the amount of the increase can refer to the amount of the increase.*

*(9) (a) If an agreement that creates a fixed term of 5 years or more does not contain any method for increasing the rent, the park operator may, no earlier than 2 years after the commencement of the fixed term, apply to the Tribunal for an order permitting such an additional term to be inserted into the agreement.*

*(b) An additional term may be inserted into the Agreement without Tribunal involvement, only if both parties agree.”*

Alternatively, removal of fixed term agreements will remove the requirements for these sections altogether, although the Act should continue to provide protection for residents in respect of how rent increase additional terms are formatted.

ARPRA also believes that Section 58(2A) should be removed from the current legislation. Removal of Section 58(2A) is crucial if the Tribunal is to be able to set the rent at the current level, that is, award no increase at all. We think this clause has single-handedly been responsible for the huge increase in the increases we have been seeing.

## ARPRA

Park operators who put forward an argument for an index that is not a general price index (e.g., PPI) are trying to make a square peg fit into a round hole. They did not have regard for the PPI when setting the increase, otherwise the increase would exactly reflect the increase in the PPI, and yet it never does.

Removing 58(2A) completely will remove the ability of a park operator to muddy the waters with irrelevant indexes, especially when combined with a rewrite of S57(d).

We refer to *Carter v Emerson* - RP 07/50985

*“In the present case, there is no evidence to support a rent increase above the Consumer Price Index. There is no evidence to cause me to conclude that a rent increase above 1.7% is warranted. Accordingly, I declare that the rent increase is excessive, and I determine that the rent increase should be 1.7% being an increase of \$3.35 per fortnight orders are made accordingly.”*

Even without the reversal of proof, the member determined that the park operator provided insufficient evidence to warrant an increase greater than the CPI.

What would he have done if Section 58(2A) were removed? No increase at all?

Section 57 (a-k) was modelled on the Residential Tenancies Act 1987, and amended slightly to increase its relevance to residential parks. When a resident or group of residents wishes to challenge a rent increase in the Tribunal, they must each lodge an application for an order under Section 55 that the rent increase is excessive. When the Tribunal hears these matters, they refer to Section 57 and the subsections therein to assist in determining the order sought. The Residential Parks Act covers both owner/renters and renter/renters.

## ARPRA

The matters listed in Section 57 therefore, are not only there for the use and reference of the owner/renter applicants. It is there for the use of the applicants, be they owner/renters with site agreements, or renter/renters with a moveable dwelling agreements. Some have been included to provide guidance for the respondent park operators. Owner/renter applicants should not feel compelled to provide evidence for each subsection. Original poor drafting of this Section creates doubt among the parties as to who can have regard for which subsection.

What applicants should keep in mind is that while they are arguing that the rent increase is excessive, the park operator will be arguing in response that the increase is reasonable and warranted. It is logical therefore that some parts of Section 57 are there for the park operator's reference and assistance in the same way that some parts are there for the applicants.

The subsections themselves can be divided into categories. Some are made only for owner/renter applicants. Some are only for renter/renters applicants. Some are there to be used by the park operator. Some are there for everyone to use, should they choose to or decide it is relevant.

With applicants who have site agreements, therefore, some of the subsections simply will not be relevant, and there is no need for them to even attempt to provide information in respect of that subsection.

The fact that Section 57 uses the word "may" indicates that not all subsections will be relevant to each application, and that the Tribunal is not compelled to reference a subsection that has no bearing in that particular application. For example, the value and nature of the appliances provided inside a dwelling that is owned by the resident has absolutely no bearing on how much site rent should be paid.

However, if the dwelling is owned by the park operator, then the park operator could use this subsection, (h) to point out to the Tribunal that the park operator has recently upgraded the air conditioning and cooking appliances, for example, or has recently renovated the bathroom or replaced the carpet. Similarly, a renter/renter could use this section to point out that the stove is 30 years old and the air conditioning does not work.

## ARPRA

An owner/renter applicant should not feel compelled to provide any information to the Tribunal under those subsections that have been included for the use by a park operator.

No court obliges a plaintiff to summons documents and witnesses to supply a defendant's evidence.

ARPRA believes—

1. Parliament never intended owner/renter applicants to be forced to provide information on the amount of outgoings the park operator has.
2. Owner/renters should not have to provide information on the value and nature of fittings within their homes, as it is simply not relevant.
3. Owner/renters do not need to provide information on how much the garbage service costs as part of the rates every year.
4. Owner/renters should not be doing GIPA applications to Council to find out how much the park rates have gone up since the last increase.

In response to the application, the park operator should be providing information that indicates how much the cost of the provision of services and facilities has risen since the last increase, and how much his outgoings have increased.

It is never up to either party in any matter to provide the evidence to support the case of the other side. Section 57 has not been set out clearly enough. Residents should not be penalised for failing to respond to certain subsections, especially when they are not there for them to use.

Subsection (i) for instance, uses the phrase "*in the residential premises*" not "*with.*" This can only be referencing dwellings owned by the park operator, and not self-sufficient dwellings owned by owner/renters. It may reference those agreements under which the premises are owned by the resident but are not self sufficient, and the resident must rely on the amenities block in the park. In this case, a resident may wish to point out that the hot water systems are old and frequently fail, or that the laundry contains coin operated machines that the resident must pay for separately to their rent.

## ARPRA

ARPRA has developed a standard response to subsections are either not relevant at all, or are there for the park operator's use, and is usually along the following lines—

*“(f) the amount of any outgoings in respect of the residential premises required to be borne by the park operator under the residential tenancy agreement or proposed agreement”*

“The residents cannot offer any evidence in relation to this point. It is submitted that this point is included in Section 57 for use by the park operators as a defence, rather than as a supporting position from the applicant residents.”

Perhaps Section 57 needs to be rewritten to provide clarity and guidance. As a way forward, ARPRA has developed a 3-part approach to Section 57:

### ***“Matters to be considered in determining rent applications***

#### *1. Residential Site Agreement Applicants*

*Applicants who are renting a site only from the park operator may provide evidence in regards to any or all of the following factors:*

- (a) the average level of site rents in the same residential park;*
- (b) the frequency and amount of past rent increases under the residential site agreement or previous residential site agreements between the park operator and resident;*
- (c) the Sydney All Groups CPI;*
- (d) the estimated cost of any services provided by the residential under the residential site agreement;*
- (e) any other relevant matter.*

#### *2. Residential Site Agreement Respondents:*

*Park operators who are providing a site only to the resident may provide evidence in regards to any or all of the following factors:*

- (a) the average level of site rents in the same residential park;*

*(b) the frequency and amount of past rent increases under the residential site agreement or previous residential site agreements between the same park operator and resident;*

*(c) the Sydney All Groups CPI;*

*(d) the amount of any outgoings in respect of the residential premises required to be borne by the park operator under the residential site agreement;*

*(e) the estimated cost of any services by the park operator under the residential site agreement;*

*(f) the value and nature of any fittings, appliances or other goods, services or facilities provided with the residential premises;*

*(g) any other relevant matter.*

*3. Residential Tenancy Agreements that are not site agreements*

*Parties to a Residential Tenancy Agreement that is not a Residential Site Agreement may provide evidence in regards to any or all of the following factors:*

*(a) the average level of rents for comparable premises in the same residential park;*

*(b) the park operators outgoings under the residential tenancy agreement;*

*(c) any fittings, appliances or other goods, services or facilities provided with the residential premises;*

*(d) the state of repair of the residential premises;*

*(e) the accommodation and amenities provided in the residential premises;*

*(f) any work done to the residential premises by or on behalf of the resident;*

*(g) when the last rent increase occurred;*

*(h) any other relevant matter (other than the income of the resident or the resident's ability to afford the rent increase or rent)"*

## ARPRA

ARPRA has removed the reference to market rents in other parks, both in the same locality or a similar locality. Many parks contain a variety of rent levels, and the size of parks is increasing all the time. It is not unusual to find parks, especially manufactured home estates, that number over 300 sites. ARPRA believes that comparisons can be adequately made within the park itself without having to reference other parks that are usually fundamentally different from the subject park.

ARPRA also believes all reference to “conduct of the parties” should be removed. This subsection is frequently misused, and has not proven relevant in enough cases to warrant its continued use.

A park operator contesting a site agreement application should provide evidence of increases in costs and outgoings since the rent was last set. This would include for example, any increase in staff wages, insurance premiums, maintenance schedules, tree maintenance, roads, all community facilities, and rates, electricity, gas and water charges.

Without evidence and documentation from the previous year, the Tribunal has no point of reference with which to determine the rate of increase. It is not enough for park operators to provide a copy of their current rates notice. If they are claiming a rates increase of 5%, last year’s notices will be necessary to support their position. Without comparison documentation, current notices have no worth.

If park operators are to be successful in justifying the amount of increase they are seeking, they need to provide original documents such as rates notices from council, and utility invoices from service providers. Spreadsheets typed up on a computer and produced on blank paper have absolutely no probative value, and should be constrained by the hearsay rule.

For example: A park operator provides evidence that shows his expenses in running the business have increased by 5% over the past year. Some of these things have nothing to do with the residents, but those things that do, represent an increase in operation costs of 4%. Therefore, he has increased the rent by 4% despite the fact that CPI is running at 3%.

The Tribunal may then decide that either the evidence produced by the park operator supports his position, or it does not. Or it may simply be out weighed by evidence provided by the residents of poor roads, malfunctioning security measures, (boom gates always break down and are never fixed), no lighting, and the use of community facilities being restricted during tourist season. Under 1

## ARPRA

(d) for example, a resident might have an agreement for a rent that is \$20 a week less than everyone else because he cleans the pool every morning.

ARPRA knows of one park where the owners live in Queensland, and have no managers. One resident opens up the office every morning for a couple of hours Mon-Fri, and accepts everyone's rent and hands out receipts. Someone else goes to the bank. Another sorts the mail, another does the gardening and another cleans the pool. All these residents pay a lower rent than everyone else, but they would rather pay what everyone else does and sleep in in the morning.

ARPRA believes that changes to Section 57 should also include the following—

- *“The Tribunal must have regard for all evidence provided by the parties.*
- *If the park operator fails to provide sufficient evidence to justify the amount of the increase, the Tribunal must set the current rent level for a further 12 months.*
- *Nothing in this section prevents the parties from negotiating an increase that is lower than that set out in the Notice, at or before the hearing.*
- *If a lower increase is negotiated, the Tribunal must set the increased rent for a period of 12 months.”*

Currently the law provides no constraint on the frequency of the service of rent increase notice to residents. Each notice must provide for a minimum of 60 days before the increase commences, however, there is no legislation in place to restrict how frequently these notices may be served.

ARPRA supports legislative change which would restrict the service of rent increase notices to one increase per annum, and that all residents must be served at the same time.

## Improved Disclosure

“Before a resident signs an agreement the park operator must currently provide the following:

- a copy of the Residential Park Living booklet produced by NSW Fair Trading (43 pages);
- a list of the park rules;
- a list of all entry costs that will be payable;
- a statement that occupation is on a tenancy basis which may end in certain circumstances and no ownership of land is involved; and
- answers to a list of 16 questions (section 73).

This is a lot of paperwork for incoming residents to read and try to understand. Some of the information is repetitive and may not be relevant to individual residents depending on their circumstances. It is likely that given the amount of paperwork some residents may choose not to read it, defeating the purpose of providing the information in the first place.”

**“Do you think the disclosure of information to incoming residents should be made more useful?”**

### **ARPRA’s Position:**

We believe prospective purchasers should be required to receive a copy of the registrable information about the park.

ARPRA is of the opinion that Section 73 of the Residential Parks Act 1998 is often misread.

### ***“73 Prospective residents have a right to certain information***

- (1) This section applies to proposed residential tenancy agreements under which a person will be a resident, or a resident of a class prescribed by the regulations, of a residential park.*

## ARPRA

*(2) A park operator who proposes to enter into a residential tenancy agreement to which this section applies must prepare, or arrange for the preparation of, a document that includes the following questions, and such other questions as may be prescribed by the regulations, and correct written answers to those questions:..."*

ARPRA's interpretation of this portion of Section 73 is that assigned agreements are not proposed agreements. They are agreements that are already in place, and for which this information should already have been supplied. Section 74 takes care of any alterations to old information.

If a resident assigns their agreement to a purchaser, copies of these documents should be given to the selling agent or, if the park operator is the agent, to the park operator, so copies can be given to the prospective purchaser prior to their deciding to buy and prior to paying a deposit. They are documents that are necessary to be fully informed. This includes a copy of the current agreement and the latest rent increase notice.

ARPRA supports the introduction of a prescribed 1-2 page disclosure statement and checklist that would be required to be completed and given out by the park operator. The disclosure statement should include matters of material interest, similar to the obligations now required of landlords under the new tenancy laws. All residents and prospective residents have a right to know details of recent flood and fire events, mortgagee repossession action, development applications and non-compliance issues.

ARPRA supports the introduction of a 14-day cooling off period for prospective purchasers.

The checklist should advise a prospective resident to obtain a copy of the park's registrable information from the Office of Fair Trading. Information in the register can be compared to information provided by the park operator.

If all the documents are not provided, the buyer should be allowed to legally withdraw from the sale at any time within the first 14 days of paying a deposit, and have the deposit returned.

Real estate has a default settlement period of six weeks during which all the checks are done. Prospective park residents should be similarly protected.

## Dispute Resolution Mechanisms

“There are approximately the same number of residential parks and retirement villages in New South Wales, with similar numbers of residents with similar issues. And yet in the last financial year (2010-2011) there were almost 2000 applications to the Consumer, Trader and Tenancy Tribunal involving residential parks and only 85 applications involving retirement villages. While some of this disparity can be explained by the different processes involved with challenging rent increases discussed earlier in this paper, the level of disputation within residential parks is disproportionate.

Under the current laws all disputes can be taken directly to the Tribunal. There are no other internal or external requirements before taking this step. Upon receiving an application the Tribunal has the power under the Act to refer the matter, with the consent of the parties, for alternative dispute resolution. This could include to the park’s Liaison Committee, NSW Fair Trading’s Mediation Unit or a Community Justice Centre. However, these referral powers have rarely, if ever, been used as, once a matter has been taken to the Tribunal, it is usually resolved by either conciliation or adjudication within the Tribunal system. “

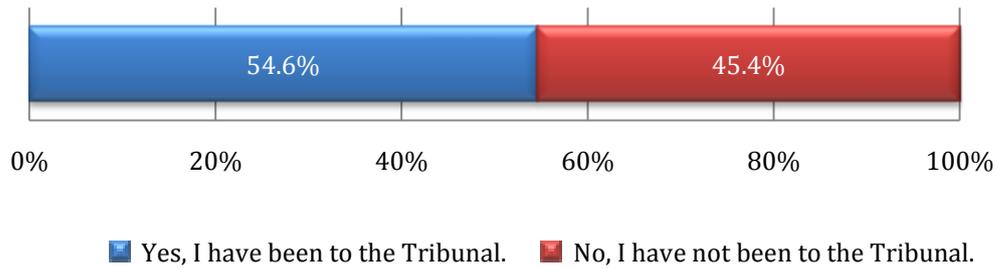
**“Have you had any experiences with the Tribunal in resolving disputes? Do you have any views on how the process of handling disputes in residential parks could be improved?”**

### **ARPRA’s Position:**

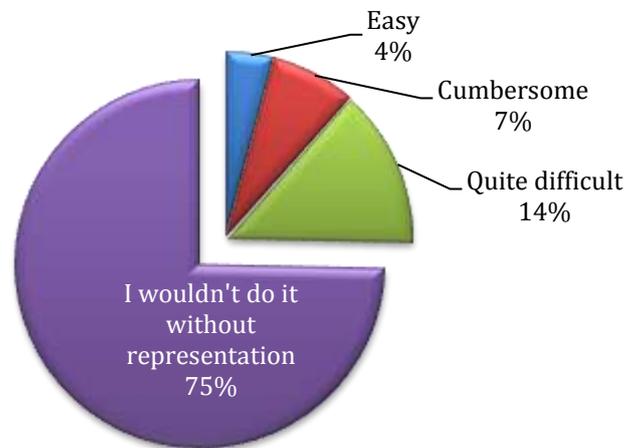
In a recent statewide survey, residents were asked several questions in relation to their experience in the tribunal. ARPRA believes that the tribunal conciliation process is very successful, and would like to see conciliation agreements further enhanced by allowing longer term agreements being allowed as orders of the tribunal.

## ARPRA

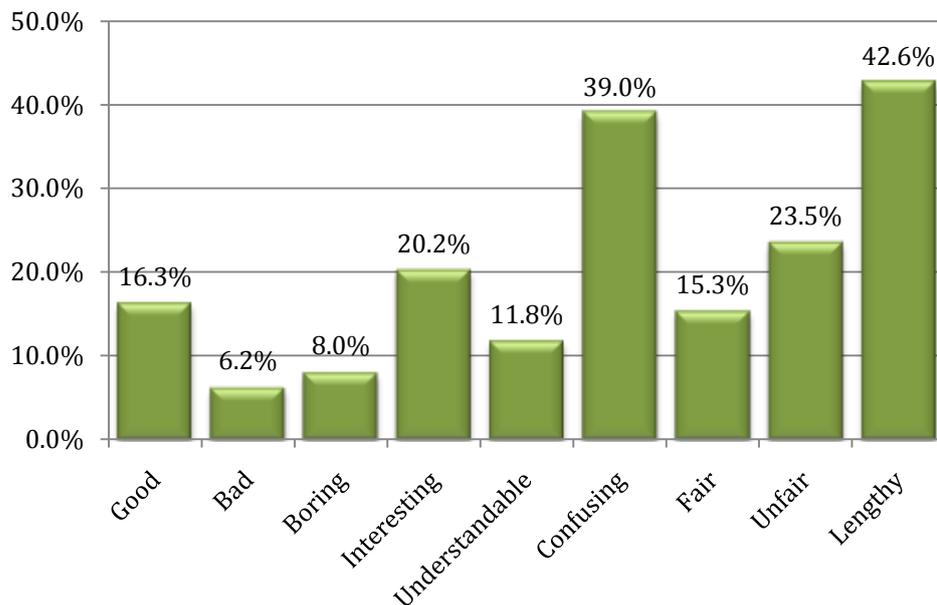
### Proportion of residents who have fought an increase or settled a dispute at the Tribunal



### Perception of the current Tribunal process



### Description of Tribunal experiences



## **ARPRA**

ARPRA believes the use of Park Liaison Committees as an alternate dispute resolution is fraught with danger, and we are unsure if this would work, given the relationship that exists in some parks in this state. It could be a voluntary option. Residents with a dispute should not be forced or penalised for not using the committee, especially if they believe the committee has something to do with it in the first place, or if they perceive it as being unhelpful or pro-park operator.

ARPRA believes that Fair Trading mediation could be a good voluntary option. We like the idea of having settlements turned into tribunal orders, without the necessity of a hearing.

ARPRA believes that representative actions are a positive step forward if adopted, and feels that the role of Advocacy Groups to have a right to represent should be written into the Act in line with a park operator's right to be represented by a park manager. This, however, is a change to the CTTT Act, not the Parks Act.

ARPRA believes that proactive compliance by Fair Trading is a positive step forward if adopted. Having Fair Trading check each park's rules for legal validity and fairness would give uniformity of approach.

## Park Rules

“Park rules, about things like keeping pets, landscaping, noise and maintenance standards for dwellings play an important role in residential parks. However, making and enforcing park rules can also cause disputes between residents and park operators.

Presently, the Act and Regulations contain a long list of matters which may be the subject of park rules. This appears to be unnecessary red tape. Why parks should be restricted from having a rule about something which is not on the list is unclear. A less prescriptive approach would be to allow park rules on any matter not already covered by the agreement, so long as the rule is not unreasonable or unconscionable.

Disputes often arise over the legality and wording of park rules. One option which may help to overcome such problems would be for NSW Fair Trading to develop, publish and promote a set of model park rules in association with key stakeholder groups. This initiative has already been successful in other areas, such as model rules for incorporated associations, strata by-laws and retirement villages. “

**“Do you agree that the process for making and enforcing park rules need to be updated? Do you have any other suggestions for how the park rule provisions could be improved?”**

### **ARPRA’s Position:**

The idea of model park rules would assist in the proactive compliance of park rules. A park’s rules could be added to the list of registrable information required under Section 142A.

Operators would have to submit all changes, amendments and new rules to Fair Trading to be assessed before advising residents. Once residents had been notified, if there is no dispute received within 30 days, the park rules are entered into the register.

## **ARPRA**

Alternately, once Fair Trading receives the new rules, they are checked against the model rules to ensure compliance. A copy could then be sent to the registered liaison or residents committee member for comment. The member should advise all residents, e.g., by placing them on the noticeboard, and invite feedback. Residents should be aware at this stage that the rules have passed Fair Trading's compliance test, otherwise they would not have been forwarded on to the committee member. A 30-day time limit for disputes could be made. If a dispute is lodged, then the rules are "stayed" until the dispute is resolved.

## Sale of Dwellings

“A number of stakeholders have suggested that the process for selling homes on-site could be improved. One issue that has been raised is the need for proprietary checks for purchasers. There are also calls for better protection of money paid for dwellings which can be up to \$200,000 or more.

The purchaser is relying on the honesty of the park operator or outgoing resident as there is usually no conveyancer or real estate agent involved. Things could potentially go wrong if, for example, the seller was fraudulently claiming to be the owner of the home. One option could be for NSW Fair Trading, in partnership with key stakeholders, to develop and promote a model “Bill of Sale” for those selling homes privately and an agreement to appoint the park operator as a selling agent.

These could include warranties as to ownership and an obligation that money is to be held in trust if the sale cannot be completed immediately.”

**“Do you have any views on how the process of selling dwellings on site could be improved or streamlined?”**

### **ARPRA’s Position:**

There should be a prescribed “Bill of Sale”.

There should be a statutory compensation fund that covers the sale of relocatable homes. There is statutory protection when a person buys real estate, or even simply a motor vehicle. Section 39 of the Motor Dealers Act 1974 states—

### **“39 Motor Dealers Compensation Fund**

- (1) The Director-General is to cause to be established and maintained in the accounting records of the Department of Fair Trading a fund, to be called the Motor Dealers Compensation Fund.

## ARPRA

- (2) There shall be paid into the Fund:
- (a) such proportion of the fees paid under this Act or the regulations by holders of dealers' licences and holders of car market operators' licences and by applicants for those licences as is determined in accordance with subsection (3), and
  - (aa) any money paid or recovered under section 20E (1A), and
  - (b) any money recovered by the Director-General in the exercise of any rights, or the pursuit of any remedies, to which the Director-General is subrogated under section 41 or which the Director-General may take under section 41A.
- (3) All fees paid under this Act or the regulations by holders of dealers' licences and holders of car market operators' licences and by applicants for those licences shall be distributed between the Fund and the Consolidated Fund in the prescribed proportions.
- (4) Subject to section 42, there is to be paid out of the Fund:
- (a) the amount of any loss that is certified by the Director-General under section 40, and
  - (b) the amount of the costs of administering the Fund, as certified by the Director-General, and
  - (c) any other amount that is authorised to be paid out of the Fund by this Act or the regulations."

There needs to be some type of consumer protection, especially if the Bill of Sale is going to include warranties and the seller uses an agent or the park operator as agent. Section 165 of the Property, Stock and Business Agents' Act 2002 concerns the establishment of a compensation fund for "compensating persons who suffer pecuniary loss because of a failure to account."

ARPRA believes this Fund should be expanded to cover losses resulting from the actions of park operators or managers who are acting as agent in the sale of a dwelling.

## **ARPRA**

Interference with the sale is not a breach of the agreement, so there is limited scope for residents to claim compensation from a park operator who is found by the Tribunal to have interfered with the sale of the dwelling while it is installed on the site. The notes at the bottom of the prescribed agreement discuss on-site sale and interference, however, as the notes are not terms of the agreement any non-compliance with the notes will not lead to compensation being found payable. The penalty for interference is obviously not a deterrent. ARPRA is not aware of any park operator that has been penalised.

ARPRA believes that the prescribed form of residential site agreement should be amended to include a clause that states that the park operator agrees not to interfere with the sale of the dwelling while it is installed on the residential site. If a park operator is found by the Tribunal to have breached this term, then compensation may be payable if the resident can prove a loss.

ARPRA believes the new Act should remove the crown reserve exemptions. Residents should not be allowed to buy a dwelling on site in a crown reserve, only to be subsequently prevented from selling on site. The current Act limits the rights of these residents even further by exempting the Crown from having to pay compensation resulting from a change of use termination. Many residents of crown reserve parks were not aware of the restrictions when they bought into the park.

**ARPRA**

The following is ARPRA's example of a Bill Of Sale.

<b>MANUFACTURED HOME BILL OF SALE</b> ( Page 1 of 2 )	
<b>IN CONSIDERATION</b> of the sum of \$ _____	
received by _____, (" <b>SELLER</b> ")	
whose address is _____	
from _____ (" <b>BUYER</b> ")	
whose address is _____	
receipt and sufficiency of which are hereby acknowledged, <b>SELLER(s)</b> grants, sells, conveys, transfers and delivers to <b>BUYER</b> the following Manufactured home:	
<b>MANUFACTURER:</b>	<b>MODEL:</b>
<b>SERIAL NUMBER:</b>	
<b>SIZE:</b>	<b>YEAR MANUFACTURED:</b>
<b>CURRENT LOCATION OF HOME:</b>	

To have and to hold the same unto **BUYER** and **BUYER'S** executors, administrators, and assigns, forever.

Manufactured Home is sold together with an equal interest in all the fixtures, accessories and equipment and all other necessities thereto appertaining and belonging except: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SELLER** warrants that Manufactured Home is sold free and clear from any lien, security interest, mortgage or other encumbrance, except;

a lien by \_\_\_\_\_ ("**LIEN HOLDER**").

**SELLER** warrants to **BUYER** that **SELLER** is the legal and true owner of the Manufactured Home and that **SELLER** has the right to sell the Manufactured Home.

**SELLER** will defend Manufactured Home against any claims or demands, except any previously mentioned lien (if any).

? The Manufactured Home is sold **AS IS** with no express or implied warranties or representations having been made by Seller to Buyer.

**OR**

? The Manufactured Home is sold with the following warranty:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<b>BUYER'S INITIALS</b> _____
----------------------------------

**MANUFACTURED HOME BILL OF SALE**

( Page 2 of 2 )

IN WITNESS WHEREOF, **SELLER** has hereunto executed and delivered this Manufactured Home Bill of Sale this \_\_\_\_\_ ("Date").

\_\_\_\_\_  
(Signature of **SELLER**)

\_\_\_\_\_  
(Signature of **SELLER**)

State of \_\_\_\_\_

Country of \_\_\_\_\_

The foregoing instrument was acknowledged before me  
this \_\_\_\_ day of \_\_\_\_\_ and year \_\_\_\_  
by \_\_\_\_\_ (name of **SELLER**),  
who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of person taking acknowledgment (Justice of Peace)

\_\_\_\_\_  
Name typed, printed, or stamped

State of \_\_\_\_\_

Country of \_\_\_\_\_

The foregoing instrument was acknowledged before me  
this \_\_\_\_ day of \_\_\_\_\_ and year \_\_\_\_  
by \_\_\_\_\_ (name of **SELLER**),  
who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of person taking acknowledgment (Justice of Peace)

\_\_\_\_\_  
Name typed, printed, or stamped

## **Assignment of Site Agreements**

Under the current law, a park operator cannot require prospective residents to provide reference checks, criminal history checks or credit reference checks. However, the practise is routine.

A character reference is not a true indication of a person's character. No prospective resident is going to provide a park operator with a negative reference. The requirement for such references is quite pointless. Owner's Corporations in Strata complexes have no say in who buys into the complex. ARPRA fails to see why park operators believe they can insist on this. Nor do park operators have the right to conduct police checks or credit reference checks. Some park operators ask for financial references. When queried, they explain that a financial reference can simply be a copy of the resident's bank statements.

Under the Residential Tenancies Act 2010, real estate agents and landlords can ask for references from prospective tenants. The Residential Tenancies Act 2010 allows a landlord to unreasonably refuse an assignment. This right of unreasonable refusal allows the landlord or agent to request references. If a prospective tenant refuses, the landlord or agent has the legal right to refuse the assignment. Park operators retain this same right in respect of tenancy agreements, but not site agreements. Assignment may be an appropriate time to ask for references under a tenancy agreement, but it is not under a site agreement, when the dwelling itself may have already been sold.

Some residential parks have park rules which state that references must be provided by prospective residents before assignment consent will be granted. This is misconceived, as the park rules do not apply to prospective residents, who do not yet live in the park.

A park operator does not require consent from residents before selling the park to a particular person or corporation. The resident is supplied with a letter of attornment advising of the new operator.

If assignment of site agreements is abolished and a new agreement is to be signed when a dwelling is sold, then the new agreement should commence at the same rent level and with the same additional terms as the terminated agreement. In many cases, it is the additional terms attached to an existing agreement that make the dwelling and agreement so attractive to a purchaser. For example, some prospective purchasers confine their search for a suitable home to a particular park because that park is the only one in the area that permits pets. If

## **ARPRA**

a park operator has decided to “phase out” the right of residents to keep a pet, then an agreement that includes an additional term consenting to a pet is a very attractive proposition. If a park operator takes advantage of the opportunity to enter into a brand new agreement to remove such a term, then the whole reason for choosing that particular home is removed. The argument remains the same for site agreements that include some measure of protection against large rent increases.

If prospective residents are protected with a 14 day cooling-off period, a copy of a new residential site agreement could be provided to them at the same time as the disclosure statement and other required information. Provided the clauses are acceptable to the prospective resident, a new agreement may be entered into. Otherwise, the prospective resident can ask for the old agreement to be assigned, or transferred, to them. In this scenario, assignment should not be contingent upon the park operator providing consent. This increases the bargaining position of the purchaser, bringing it closer to that of the operator. For example, the park operator may wish for a new agreement to remove an outdated rent increase clause. The purchaser is only interested in the right to have a dog. A new agreement may be negotiated which removes one but keeps the other. The park operator should keep in mind during this process that, if the negotiations fail, the current agreement continues along with all its additional terms.

## Security of Tenure

“Security of tenure remains a concern for many residents who own their dwelling but rent the site from the park operator. The major worry is the potential to lose their home if the park is redeveloped or is sold for a use other than as a residential park. One suggestion that has been put forward is that the laws be changed to encourage more long-term leases of up to 40 years. Most residents currently move in on an initial lease for six or 12 months, which is often not renewed but continues indefinitely.”

**“Do you have any views on ways in which the security of tenure for residents could be improved?”**

### **ARPRA’s Position:**

Security of tenure was not a problem at the time the original 1998 Act was promulgated. Until then, the park operator was only concerned to develop and settle a park and run it for a profit. But with the property boom, suddenly coastal strip land values took off and some park operators realised they were sitting on a gold mine. They argued they should not be prevented from capitalising on their investment even though they made promises of security of tenure and the wonderful lifestyle of village living, a cornerstone of their earlier advertising. Capitalising on their investment should not be at the expense of the residents. ARPRA says if a park is redeveloped, the Act must provide for full compensation to be paid to the resident, nothing more and nothing less.

The reality of the current situation is that if a park operator decides to redevelop a park he must inform current and incoming residents of his “intention” to do so. It may be years before the actual development plan is approved by the local authority and even longer before the development takes place. The immediate effect on residents is that they cannot sell their dwelling to an incoming tenant because no one will buy it. But the park operator cannot issue a Notice of Termination under Section 102 until a development application is lodged with, and approved by, the Local Council.

## ARPRA

So there is this period of limbo, often some years when the resident is literally left to “hang out to dry”. No one will buy the dwelling because of the park operator’s “intentions”, and because a termination notice cannot be served until the development application has passed through council, the protection of the Act does not come into being, and the only solution is to move the dwelling at the resident’s expense, but there is nowhere to go. So the inevitable occurs and frequently does. The park operator makes a ridiculously low offer for the dwelling which, in the absence of any other offer, the resident has no alternative but to accept. The resident of course can elect to stay put. The worry of staying on under these circumstances is apparent.

The current Act only provides two courses of action:

1. Relocation of the dwelling at the park operator’s expense, a virtual impossibility due to unavailability of land or unwillingness of other park operators to take the dwelling because they now prefer to profit from placing a new dwelling on their land and selling it at a substantial capital gain to new buyers.
2. Purchase of the dwelling by the park operator. The obvious weaknesses of the 2006 amendments to the Act covering purchase are as follows:

Section 130A(2) “The Tribunal may, by order, determine the value of the resident’s dwelling and for that purpose may obtain a valuation of the dwelling from one or more registered valuers.”

The question of what the value should be based on is completely open to interpretation. Is it the original purchase price? Is it the current replacement cost? Is it the price the resident could freely obtain if the park was not being developed? In other words, what is its true market value?

We quote Section 130A (4): “The Tribunal’s determination may have no regard to the dwelling’s location.” Why is this restriction made at all? A dwelling on the coast may have a far greater value than one located 200 kilometres inland.

Section 130A(5) “The Tribunal’s determination of the value of the dwelling is advisory only, and does not bind the resident or the park operator or affect any agreement between them for the sale of the dwelling”. So there is nothing really enforceable under the Act under this new amendment.

## ARPRA

We propose a change to Section 128 of the Act that states—

“That the amount of compensation to which a resident is entitled otherwise than in connection with the relocation of a dwelling to a new residential site shall be the lesser of:

- (a) The fair market value of the residence, if the residence were sold with an assured tenancy of the residential site for at least 20 years from that date subject to due compliance by the occupier of the site with the terms of the residential tenancy agreement, or
- (b) A sum which in the opinion of the Tribunal would be sufficient to enable the resident to acquire reasonably comparable accommodation in another residential park in a locality with an assured tenancy for at least 20 years, (subject to the due compliance as set out in the previous clause.)”

The system assumes the resident will move to another park, but in many cases this may not be viable or possible. A fairer method could be to allow agreements to state the amount payable or set out the method of calculating compensation in these situations. This would allow the parties to know up front where they stand. Alternatively, it could be based on the value of the home, as assessed by an agreed valuer prior to any decision to change the use or close the park.

ARPRA supports the Victorian model of five-year-minimum agreements. However, we believe that the adoption of a five-year-minimum term will mean that residents must retain the right to assign their agreements.

ARPRA believes that very long-term agreements increase a resident’s ability to secure a mortgage over their home. This is a very reasonable financial alternative for residents who would otherwise be constrained to enter into a shared equity contract with the park operator.

Even with long-term or very long-term agreements in place, a park owner would retain the right to develop the land and increase the return on their investment. Currently, a notice of termination served under Section 102 for a change of use must not provide a date for vacant possession that is before the end of the fixed term. While a 20 year agreement would reasonably offset the impact on house values of any “intention to develop” statement issued by the park operator, it remains that provision must be made for a park operator to be able to terminate such agreements earlier than the full term, provided that development consent has been granted by council.

## **ARPRA**

Such a provision could either make use of the current hardship provisions, or amendments must be made that would allow a park operator to apply to the Tribunal for consent to issue a Section 102 notice. Such an application should only be made after development consent has been given.

ARPRA does not agree that park owners should be allowed to share any future capital gains tax with the resident when a house is sold on site. A dwelling is not the premises subject to a residential site agreement, and the resident may spend a considerable amount of their own time and money renovating and improving the home. Such an arrangement within the scope of a residential park would be highly inequitable. ARPRA does not believe it would take any pressure off rising rents.

## **Greater Simplicity and Certainty**

“The NSW Government has given a commitment to reduce red tape by 20% in its first term and introduce a “One On, Two Off” rule for any new regulation. With more than 1000 existing Acts, New South Wales has more legislation than any other State. Those involved in the residential parks sector currently need to be familiar with, in addition to planning policies and local environment plans, the:

- Residential Parks Act 1998;
- Residential Parks Regulation 2006;
- Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005;
- Holiday Parks (Long-term Casual Occupation) Act 2002; and
- Holiday Parks (Long-term Casual Occupation) Regulation 2009.”

**“Do you agree that the law should be simplified and clarified? Do you have other suggestions for how this could be done?”**

### **ARPRA’s Position:**

Redrafting the Parks Act to include Parts which function on similar lines to the current Local Government Regulations would improve clarification.

For example:

Part 1 could cover general matters such as the definitions, application of the Act, park rules, resident and liaison committees, use of common facilities, park access devices and mailboxes.

Part 2 could cover those topics currently provided for in the Local Government (MHE, CP, CG & MD) Regulation 2005.

Part 3 could cover long-term casuals. The redrafting of laws currently under the Holiday Parks (Long-Term Casual Occupation) Act and its Regulations could only serve to improve clarity.

## **ARPRA**

Part 4 could cover the permanent residents, both home owner site agreements and resident tenancy agreements, or just the site agreements. Inclusion of tenancy agreements would depend on whether or not they remain with the Parks Act, or are transferred to the Tenancies Act. If they are transferred, the Tenancies Act could then be amended to include the operation of Part 1 as it relates to tenancy agreements in residential parks.

### ***Terminology***

The term “park owner” currently has three separate definitions. It could refer to the person who grants the right to occupy, the land owner, or in some cases, the person who would be known as a “head-tenant” under the Residential Tenancies Act 2010—that is, the resident who owns the home and has a site agreement, but who grants the right to occupy that home to another person.

The term “park owner” should be limited to the person who owns the land, but not the business.

“Park operator” refers to the person who owns the business (and may also own the land) and manages the park.

“Park manager” refers to the person who has day-to-day management of the park, and who manages the park on behalf of a park owner or a park operator.

“Home owner” refers to the person who owns the home and is party to a residential site agreement.

“Resident” refers to a person who is party to an agreement under which they rent both the site and the dwelling from either the park operator or the home owner.

“Occupant” refers to a person who resides in a dwelling with either a home owner or resident, but is not a party to the agreement.

A residential park is defined as either a caravan park or a manufactured home estate, depending on what is stipulated in the park’s approval to operate. If the Local Government Regulations are incorporated into the Parks Act, it may be that these definitions will have to remain. However, both terms represent a particular type of residential park. Any confusion between the two types is not necessarily the problem—the problem appears to be with the business name of the park.

## **ARPRA**

Some parks use the word “Village” in their name, which leads residents to believe they are actually living in a retirement village, when they are not.

All residential park advertising should contain a line which advises that the park is not a retirement village, but a residential park.

### ***Coverage under the Law***

The “principal place of residence” test can be found within the Act’s definition of “residential site agreement”, and in Section 5(1)(b). The phrase used in the definition is “the resident occupies the premises as the resident’s principal place of residence, and...”

Section 5 uses “residential premises” rather than just “premises”. It is not known if the difference was intentional, and if so, what it was trying to achieve. In any event, the word which causes residents the most angst and is open to interpretation more than any other is “occupies”. “Occupies” indicates a present tense rather than past, and has led to some Tribunal members ruling that residents must always be in occupation for the continuation of the agreement. Notwithstanding the fact that the definition of “resident” includes the resident’s heirs, executors, administrators and assigns, and the Act allows for subletting, some members have ruled that the Parks Act no longer applies to agreements under which the resident no longer personally occupies the premises.

Although Section 5(1A) provides for exceptions to this test, it remains that a resident’s heir, or executor, for example, does not fit the exemption.

It is a common practise among some park operators to serve a resident’s heir or executor with a Notice of Termination either under the Tenancies Act for no grounds, or under the Holiday Parks (Long-Term Casual Occupation) Act for the same reason.

This abrupt withdrawal of rights cannot possibly be what the legislators intended at the time the Parks Act was drafted. A person who has inherited a permanent dwelling is usually the resident’s adult child, struggling to cope with the death of a parent. It is completely insensitive at this time for a park operator to serve the heir with a notice which stipulates the dwelling must be removed from the park. Yet it happens.

ARPRA notes that the “principal place of residence” test operates to prevent third parties from treating residential parks as investment portfolios. It prevents companies or landlords from buying up multiple homes in a park, then subletting

## ARPRA

or renting them out to others. Such a practise would not be welcomed by other home owner/occupiers.

### Case Studies

- (1) A resident of a park enters into a personal relationship with another resident of the same park. They begin to share one of the homes, while the other is placed on the market for sale. The Tribunal enforced a Notice of Termination for no grounds the park operator had served on the owner of the vacant dwelling, ruling that the Parks act no longer applied as the resident no longer occupied the premises. The resident had to sell the dwelling to the park operator for less than half of what it had been advertised for, or she would have run the risk of being ordered to remove the dwelling from the site completely.
- (2) A resident inherits his father's dwelling when his father passes away. After living in the dwelling himself for a few years, the resident moves out after marrying, as the old van is not large enough for two people. The dwelling is placed on the market for sale. During the resident's application to the Tribunal regarding interference with the sale, the member warns he believes he may not have jurisdiction to hear the matter, as the resident no longer occupies the premises as his principal place of residence. This is despite the fact that the dwelling has been used continuously as a permanent residence under the one agreement for 27 years. The end result was another sale to the park operator for an amount less than half the original advertised price.

ARPRA supports the removal of the "principal place of residence" test, provided measures are implemented to prevent dwellings in parks being used as investment properties.

ARPRA submits that applying the "principal place of residence" test only at *commencement* of each site agreement, may resolve some of these issues. An exemption would be required for homes owned by the park operator.

## **ARPRA**

### ***Simpler Standard Agreement***

ARPRA welcomes the development of a single standard agreement. This would support the removal of inequities for residents of crown reserve parks and national parks.

ARPRA believes that the option for a rental bond in site agreements should be removed.

ARPRA believes that each prescribed agreement should contain a clause that contains map or diagram of the subject site, and the map should include the explicit dimensions and total area of the site.

ARPRA believes park operators should be obligated to ensure adequate site boundary markings are in place at the commencement of the tenancy.

### ***Matters Covered by Other Laws***

Section 52(3) of the Residential Tenancies Act 2010 states—

“(3) A landlord must comply with the landlord’s statutory obligations relating to the health or safety of the residential premises.

*Note. Such obligations include obligations relating to swimming pools under the Swimming Pools Act 1992.”*

This is a term of every residential tenancy agreement. A similar approach may be of use in the Parks Act, however, ARPRA does not support a reduction in, or the removal of, Section 74A of the Parks Act. ARPRA supports making Section 74A a term of the agreement, so that any non-compliance that leads to a loss by a resident is compensable.

ARPRA supports the inclusion of important consumer protections in the Parks Act, especially with reference to the supply of electricity to park residents. ARPRA supports the introduction of a national framework for electricity and gas licensing, however this should not mean that residents’ current protections are diminished.

### ***Rental Arrangements in Parks***

“People who rent homes in parks are similar to tenants who rent premises in the general community. However, their tenancy rights are set by the Residential Parks Act not the residential tenancy laws. The Residential Tenancies Act 2010, which commenced in January, contained over 100 reforms which do not apply to those renting homes in parks. One option would be to adopt the Queensland approach and bring those who rent homes in parks under the general tenancy laws, leaving the Residential Parks Act to cover only those that own dwellings. This would make the Act much shorter and simpler as provisions dealing with reservation fees, locks on premises, access to homes, etc. would not need to be replicated. The alternative is to incorporate most or all of the recent tenancy law changes into the Residential Parks Act.”

#### **ARPRA’s Position:**

The NSW Government’s commitment to cut red tape would not support the duplication of tenancy laws. However, the Tenancies Act reforms have been drafted to exclude residential parks. The Residential Tenancies Act 2010 would require amendments to include residents of parks who rent both the dwelling and the site. For further comment on this, see “Greater Simplicity and Certainty” above.

ARPRA does not support the concept of residential park dwellings being purchased as investment properties. ARPRA knows of one case in which an individual intended to purchase at least three dwellings in a park, while living in a towable caravan on a fourth site. The individual intended to rent out the other three dwellings, but was prevented from doing so by the “principal place of residence” test.

### ***Consistent Rights for Homeowners***

“Not all residents who own their dwellings in residential parks have the same rights. The Act has different provisions, particularly in regards to the on-site sale of homes, for those living on Crown Reserves and National Parks and those that own a caravan without a rigid annex. A number of stakeholders have suggested it would be simpler if all permanent residents who own dwellings had uniform rights.”

## **ARPRA**

### **ARPRA's Position:**

ARPRA supports the introduction of uniform rights for all park residents. Those residents who live on Crown Reserves or National Parks should have the same rights as other residents. The Government should not exempt itself out of its obligation to pay compensation to residents when the use of their site changes.

### ***Greater Clarity of Obligations***

“The present obligations of residents and park owners are spread throughout the Act or left unsaid. It may assist to provide greater clarity and certainty if the obligations of the parties were brought together and further spelled out. This could include more detail about who pays for what, including sewer availability charges. The Act could also specify the park owner’s obligations to maintain entry lights and common area lighting in good working order; maintain roads and walkways in a safe condition and ensure each site is lawfully useable as a residence and complies with any regulations under the Local Government Act 1993 with which it is required to comply. A general obligation to act in good faith could also apply to all parties.”

### **ARPRA's Position:**

ARPRA supports the introduction of greater clarity of obligations. ARPRA would support a reduction in the use of the word “reasonable” wherever possible. For example, “a reasonable number of occasions”, or “reasonable notice”. Such statements are too subjective and are open to interpretation. What is “reasonable” differs from person to person. Whether or not residents are obligated to pay sewer usage and availability charges is also open to interpretation.

It is argued that both water and sewer availability charges are charges the resident should pay, because they cover the park operator’s costs of providing and maintaining those systems. ARPRA believes that both these charges are adequately covered by the park operator’s general obligation to maintain and repair the common areas and facilities of the park. Water availability is explicitly dealt with in the current Parks Act. Sewer availability is not; therefore, it is not a charge residents are obligated to pay.

If the Government were to deem it appropriate to include sewer availability as a charge that residents were obliged to pay, ARPRA submits that this charge should be combined with the water availability charge, and included in the current \$50 annual cap. Sewer usage charges are not levied against direct domestic customers, as a sewage discharge factor has already been included in

## **ARPRA**

the formula used to calculate the amount charged per kilolitre for water usage. Customers cannot be charged twice for the same item.

### ***Service of Notices***

The Residential Tenancies Act 2010 has been amended to include service delivery into a tenant's letterbox as a valid method of service. ARPRA accepts this is a reasonable method of service in a residential park. However, many parks still have no provision for individual mail delivery. Mail is either sorted behind the office desk, or placed in large boxes subdivided alphabetically. The end result is that some residents have compromised privacy in relation to the delivery of their mail.

ARPRA submits that parks without individual secure letterboxes should be exempt from the operation of letterbox hand delivery.

## Emerging Issues

### Shared Equity Agreements

Following is a submission written by a number of residents who are directly affected by shared equity agreements. ARPRA reproduces the submission below, with the consent of the authors, who wish to remain anonymous.

“This is a submission about residential park housing costs, shared equity and opportunity fees by some of the residents who have entered into those agreements.

The residents who have provided input into this submission are endeavouring to convey the problems they are experiencing as they feel these problems will eventually destroy the affordability of residential park living.

Radical changes need to be made. Foremost of which is the need to establish in residential parks strata title for individual sites and administer the parks as co-operatives.

Continued private ownership of these parks, will naturally generate profit for the operator, placing continued upward pressure on home and living on site costs. This situation needs to be eliminated if residential park living is to remain available as a means of solving the housing crisis and provide security of site tenure and home ownership.

This submission refers to Residential Parks only, not Holiday or Tourist Parks.

### *General Information*

Residential park living is an important part of the housing mix. It can also be the most cost effective means of providing suitable and affordable housing for the majority of people. The cost of entering a residential park has spiralled upwards to the point where it has become prohibitive for many potential residents.

Enquiries made at a manufactured home factory about cost price of a three bedroom home four years ago showed that price was under \$100,000. Plus installation costs of \$30,000 maximum. The problem is finding a residential park that will allow installation of a privately owned home there. None are available

## ARPRA

so eventually new residents have to settle on the same home, owned and installed by the park operator paying \$260,000 installed, or twice the cost price.

Park operators will not allow an incoming resident to purchase their home direct from the factory and install it in their park. You have to buy the new home from the park operator. To make this inflated home cost more appealing to the incoming resident, the park operator offers shared equity. Typically the incoming resident pays 65%, the park operator retains the other 35% interest. It has cost the park operator nothing because he has managed to take advantage of a housing location shortage caused by his own restrictive practices.

To compound this problem the park operator here has introduced an opportunity fee for all incoming residents who purchase shared equity homes. This fee is 1.5% of the full sale price, for ten years. The purchaser has paid upon entry, 65% of the cost price and ends up owning only 50% of the home in ten years time. This fee is also known as exit or deferred management fees in some industries.

Today new homes are selling for \$310,000 or more in this park. If purchased direct from the manufactured home builder the cost of supply and installation is still well under \$150,000 if installed on private land.

An incoming resident buying a new shared equity home for \$310,000 will pay \$201,500 up front before moving in at the most common 65% – 35% split. Assuming they live there for ten years or more before selling or dying, they will incur the full opportunity fee of \$46,500.

Then they or their estate will have to pay the 35% shared equity, which in this case is \$108,500 (assuming that the home can be sold).

The total cost of living in this shared equity home for ten years has now become \$356,000 (excluding site fees). Park operators through a policy of restricting private home imports into their park, combined with shared equity and opportunity fees have added more than \$200,000 to the original home and installation cost.

How is residential park living to remain affordable and an important part of the housing mix if these actions by park operators continue? Our village is marketed as an over-55s leisure and lifestyle type park. Some residents who were in their seventies have purchased shared equity homes, some with or without opportunity fees. During the last five years they have suffered ill health and need to enter aged care, assisted living accommodation, or nursing homes.

These residents and many others who have decided to leave the park cannot sell their homes. A new prospective resident is offered a second hand home at the

## **ARPRA**

price asked by the seller. The seller needs enough to pay the 35% shared equity to the park operator as well recovering their own 65%.

Capital gain is a non event, so any opportunity fee due to the park operator will have to come out of the sellers remaining share of between 65% and 50%, at settlement, again only if they could sell.

At some point prospective residents purchasing second hand homes have to meet the park operator to sign a site agreement. A simple comment such as “are you aware of the new shared equity homes available” can ruin the sale of a second hand home. The 65% cost price offered by the park operator is far more attractive than paying full price for a second hand home. Allegations of interference in home sales at this point have been made by some residents.

The residential park operators here seem to have a formula which allows them to purchase park after park, seven at last count. The number of sites multiplied by the site fees, less running costs gives a rough indication of loan repayment ability.

We feel this park operator has to apply all income towards loan repayments. There is nothing left to fix up the suspension-busting roads and drains we have to endure.

Management recently called a residents information meeting and informed us that because new homes were being sold to residents taking up the shared equity option, rather than paying the full cash price being asked, there was no money available to fix up the roads.

Surely there needs to be a means test preventing under-capitalised park operators from entering the industry. Are we condemned to suffer these roads until enough of us die, allowing shared equity and opportunity fees to be collected by the park operator? Even then there is no obligation on them to fix these problems be it roads or amenities. Indeed if all the park home sites are fully developed where is the incentive to do so.

### ***Problems Caused***

By far the greatest concern expressed by the residents here is their inability to sell their homes and leave the park. They all want to recover their capital outlay, which as described in General Information has become nearly impossible. The combination of being forced to buy the home from the park operator at his inflated price and installed by them has doubled the cost. Added to this is shared

## ARPRA

equity and the opportunity fee that goes with it since January 2008. Home owners wanting to sell cannot compete with, or offer shared equity.

On today's figures buying a new home in this park using shared equity will be \$200,000 dearer than if the incoming resident had purchased their new home direct from the builder and had them install it on their own land.

At least two home owners here became so desperate to sell, having tried for over one year that they decided to sell back to the park operator at the greatly reduced price they offered. The park operator then re-sold these homes, with shared equity and opportunity fees. To the dismay of the previous owners these homes were resold at around the same price that they originally paid.

A condition of shared equity home contracts here is that the park operator has to be given the first option to buy the home when it comes up for sale. (Sect.13 d). They have twenty one days in which to decide. This is unfair as it prevents the seller from immediately accepting a potential cash offer from a buyer who might not want to wait the twenty one days, knowing that the park operator is entitled to buy it.

Another potential contribution to the rising cost of housing in this industry is that the park operators will take up the option to buy on all second hand homes. They know that the resident cannot sell their home for cost and will except a lesser offer. They will then resell at the higher value with shared equity and opportunity fees as an incentive starting the whole cycle over again.

Shared equity home contracts contain clauses which guarantee the park operator 35% of the resale price when that event occurs. If the resale price is less than the original, then the park operator is still entitled to that original amount. This means that he cannot lose even though his own policies have caused the drop in second hand home values. If the house sells for more than the original cost then the park operator also receives 35% of the increased amount.

No one in this park who sold a home purchased with shared equity and opportunity fees has been able to recover their outlay, let alone make a profit or capital gain. An increasing number of residents are becoming desperate to sell, needing the proceeds for the bond to enter into aged care. Again this is unfair because the resident may be forced to sell at a time when the market is low and then have to compensate the park operator who is immune to a loss. Another resident who is trying to sell wants to use the capital to subsidise renting a unit outside the park, as they feel this type of living will become unviable.

## **ARPRA**

Other concerns expressed include, “We cannot sell our home now, so how can our family expect to at a fair price if we die here? We want our assets passed to our children, not the park operator.”

The Office of Fair Trading would no doubt have access to legal advice. We ask that they have a look at the shared equity and opportunity fee house contracts currently being used by some park operators.

We claim they are unfair for several reasons. For example they are immune to any loss of their 35% if the home is sold, because they have exempted themselves from the market place down turns, yet they will claim extra if the home sells for more (this has not happened so far).

Can a contract between the two parties be considered fair if one party has to accept all losses as a result of the agreement, while the other places themselves beyond any loss no matter what the market dictates.

Another example mentioned by some residents is that they pay 100% of the home insurance, even though they only own 65% of the home. These contracts are too one-sided to be fair to the resident.

Concern was expressed by some residents about what the park operator might be doing with their 35% share of their homes. Are they using this as collateral to purchase the additional parks that they are accumulating? Alternatively, can they use this 35% collateral as security for other commercial ventures?

Some residents say they live in fear of the bank knocking on their door and asking for the 35% shared equity in cash, because the park operator has defaulted for reasons unknown to the resident.

### ***Problem Solving***

If residential parks had Strata Titles available a prospective resident could buy their home direct from the manufacturer. They could then install their home on site, at cost. As previously stated this would save the resident from paying the park operators mark-up on the house sale and installation, reducing the cost of entering a park. It allows lending institutions to have greater security by holding a mortgage on the land. They would then be more receptive to lending money on the home to go on that land. This in turn will provide greater site security of tenure.

## ARPRA

The incoming resident would be spending their money purchasing their own strata title, with all the benefits that entails, such as first home buyer grants if eligible, rather than providing a profit to the park operator.

Residential Parks are an important part of the housing mix in this state. They provide the fastest and cheapest method of developing family suitable accommodation. Housing NSW homes are not available or being built quickly enough to make any impact on the demand for them.

The State Government could indirectly adopt the roll of park operator in residential park development. They would purchase the land, install roads, an office and strata title the land into suitable size home sites. Land would be priced to allow the government to recover their cost. With such attractive terms and entitlements on offer to prospective residents this would happen within one year of planning approval. There is no better way to reduce the state wide housing shortage.

The Federal Government through its Centrelink offices pays out millions of dollars in rental assistance. A typical park would have about 300 residents. In our over-55s Leisure and Lifestyle Village, nearly all residents are on aged or other type pensions attracting rental assistance. If we became strata title holders then rental assistance would not be available or required. The site fees paid by the resident would reduce by the rental assistance amount. The park operator's profit is eliminated so fees need only to cover park running costs and common facilities. This money saved by Centrelink could be used in conjunction with the State Government to establish these types of parks. When they are up and running after one year, the government could hand over management to a residents co-operative.

We ask that serious modelling be conducted on this option, especially its potential to help the housing shortage crisis. It may be that Housing NSW is the ideal initial managing body for that first year.

Abolish all shared equity. It costs the park operator nothing. It is confirmation that the asking price of these new homes is too high and is only offered as an incentive and means to buy at the inflated asking price.

If shared equity is allowed to remain in place, then the cost of entering a residential park will become out of reach for many prospective residents.

The park operator here has now purchased back at least two homes that they originally sold brand new using shared equity. Both these homes have been resold again, using shared equity (and opportunity fee) to the incoming buyer.

## ARPRA

Unless shared equity is abolished, park operators will in future, purchase and resell the same home over and over again. In our over-55s village that makes for a regular turnover of residents, almost all paying shared equity. This artificial extra cost will eventually reflect in Housing NSW applications, because residential park living will become unaffordable.

One resident commented, "(our park owner) has re-invented death duties, disguised as shared equity and opportunity fees."

Abolish all opportunity fees. This is another outrageous cost added by the park operator which is adding to the price of housing here. This costs the park operator nothing but does allow them to take advantage of the prospective incoming resident's desperate need for housing.

Less than five home buyers here have paid the full asking price for their new home, that is, over \$250,000. They say with hindsight that they have paid too much, thinking that 100% ownership would give them greater security. While the park operator cannot ask them for 35% shared equity, they like the rest of us cannot sell their homes for the same reasons. Their situation is made more difficult because they have more money tied up than those on shared equity contracts.

If shared equity is to be abolished compensation of 35% of the purchase price should be paid by the park operator to those residents.

It is this company's policies that will destroy the residential park as an affordable housing option. In particular, the prevention of private new home imports into their parks. Added to this is the inflated cost of buying one of their homes, shared equity, opportunity fees, and as the CTTT is well aware, incessant site fee increases.

The State Government could use this review to restructure the residential park industry, in particular, private ownership with its accompanying need for profit, which is only increasing the cost of what used to be an affordable housing option. A residential park would consist of 100% permanent residents and would be run as strata title co-operatives.

It will keep the cost of housing closer to the actual cost price, which will in turn make affordable housing available to many more people.

Unfortunately some residential park operators have become residential park exploiters. If this situation remains unchanged, the Housing NSW waiting list will become the new growth industry in NSW.

It was written in the lead- up to this Office of Fair Trading survey that some park operators may need to leave the industry.

## **ARPRA**

Perhaps this park operator would have a more suitable role in Tourist Parks.

### ***Summary***

#### Changes Requested

1. Residential Parks to become strata title only and managed as co-operatives.
2. Modelling be conducted to confirm viability and establish implementation methods for these parks.
3. Input from the Federal Government through Centrelink on how to best divert site rental assistance savings towards the initial park start up costs.
4. Abolish all shared equity in residential parks
5. Abolish all opportunity fees in residential parks.
6. Compensate those few residents who paid the full new home asking price.
7. Rewrite home contracts so they are equally fair to both parties.
8. Remove the need for contact between the park operator and potential buyer, where the home seller has made or arranged the sale, without the operator.

The preferred criteria options of Cost Benefits, Efficiency and Effectiveness stipulated by the Department of Fair Trading have been addressed in this submission.

## **Use of Parks as Crisis Accommodation**

ARPRA supports the removal of the 30/30 rule, and also notes the use of parks as crisis accommodation is a situation unlikely to arise in a manufactured home estate. It is generally restricted to caravan parks which also contain a tourist component. The 30/30 rule applies to dwellings that are comprised of a caravan or campervan without a rigid annex attached. ARPRA believes that in some instances holiday cabins are also used. As premises that are ordinarily used for holiday purposes, holiday cabins are already exempt from the operation of the Act. This means the availability of “trial tenancies” will continue, even if the 30/30 rule is removed.

The term “crisis accommodation” is not referring to a social housing tenant with a tenancy agreement. Crisis accommodation refers to financial assistance provided to ensure someone has a place to stay for a limited number of nights, usually seven.

ARPRA is aware of parks that have contracted with local HNSW offices and the Department of Corrections to provide long-term housing to social housing tenants and parolees and others recently released from prison. ARPRA does not support the use of residential park accommodation in this manner, just as it does not support private ownership by one individual or company of more than one dwelling at a time. ARPRA does not support the use of group head-leasing arrangements by any person, company or government department. ARPRA may reconsider this position if such head lease arrangements were confined to HNSW, and HNSW gave a written undertaking that only tenants aged 55 and over were provided housing in this way.

## **Parks Exclusively for Over-55s**

Currently, many manufactured home estates advertise themselves as a “village” with an “over-55s lifestyle”. Many prospective residents wrongly assume that the park is a retirement village. More still remain convinced that their park has a legal right to refuse residency to everyone not aged 55 or over. This is incorrect, and refusal on this basis would be tantamount to age discrimination.

Many park operators wish to ensure that the majority of their residents are mature-aged. A park operator who has a majority of residents over the age of 55 may be eligible for a land tax exemption. In order to qualify for the exemption, park operators have to tread carefully around the age discrimination legislation.

## **ARPRA**

ARPRA believes that operators of manufactured home estates should be able to apply for an age discrimination exemption, which would allow them to be eligible for the land tax exemption.

A park operator is not permitted to unreasonably interfere with the sale of a dwelling while it is installed on site. An age discrimination exemption would ensure that all sales must be only to prospective residents who are aged 55 years and over.

Such a situation is not compatible with a caravan park that retains a tourist component.

ARPRA believes that the age exemption should be included in the park's approval to operate, as issued by the local council.

### **Shift from Caravans to Manufactured Homes**

“Some park owners buy caravans from outgoing residents, replace them with manufactured homes and then on-sell the new homes.”

ARPRA has no real issue with this practise, provided that a fair price was given to the seller of the original dwelling, and there was no interference with the sale that left the seller feeling they had no choice but to sell to the park operator. Residents are entitled to sell their homes while they are installed on site, and residents determine their own selling price. The current parks act allows for a resident to upgrade or replace their dwelling, with the consent of the park operator.

If a park operator chooses to replace the dwelling after purchasing it from a resident at a price the resident agrees to, it is no concern of the selling resident what the park operator does, once the operator owns the dwelling.

## **Other Issues Not Covered in the Discussion Paper**

### **Mail Facilities**

ARPRA believes that the provision of individual lockable letterboxes should be mandatory.

If the park operator was obliged to provide individual letterboxes to residents, they should not be allowed to pass this cost on. Residents are not obliged to pay directly for any other facility that is provided with their premises. There is no reason why letterboxes should be viewed any differently.

Individual letterboxes should always be installed at a location that allows for delivery of mail to be directly effected by Australia Post. If park operators wish to avail themselves of any amendment that allows for hand delivery into a letterbox, then those park operators should ensure that residents first have individual letterboxes, otherwise service cannot be assured.

Letterboxes must be installed in a manner that ensures that mail is not affected by rain or other adverse weather conditions. Letterboxes for parks are installed in banks, or rows, and must be weatherproof and installed and maintained as per Australia post regulations. Letterbox banks should be located under shelters.

Parks that do not currently have individual letterboxes installed should be given 12 months to install them. Should this not occur, residents should be able to apply for an order from the Tribunal that the park operator install the letterboxes.

### **Site Boundaries**

ARPRA believes that the prescribed form of agreement should contain a clause that allows for a site map clearly showing the site boundaries and the dimensions.

There are often disputes that arise between residents and between residents and park operators as to the exact boundary lines between site frontage and the roadway of parks. There may be an absence of surveyed boundary pegs, or park survey plans filed with the local council authority may be deficient or even, in the case of some old caravan parks, absent altogether.

## **ARPRA**

In acquiring freehold land titles, survey maps and boundary pegs are an essential part of the sale process. In leasing a residential site the ground plan and pegging of the site is no less important but is often a neglected element, which only becomes apparent when a dispute occurs.

The only time the legislation attempts to safeguard the interests of a park resident is contained in the Residential Park Regulations 1999 and Part 1 of a Residential Site Agreement where under “premises” it is mandatory to show the size of the site (dimensions or square metres). Local Government Regulations state that site boundaries must be clearly delineated, and that site identification must be conspicuous. This is clearly inadequate.

ARPRA propose a very simple solution to this particular problem which is to change the “premises” part of the residential site agreement to show a proper plan of the site with full boundary dimensions and annexed to the site agreement.

### **Site Agreements**

ARPRA believes that printed agreements provided by advocacy groups like the CCIA should be prohibited, and all the additional terms struck out. Additional terms in the CCIA agreement might be on a separate page, but to prospective residents, they look just as legal as the prescribed terms. We find them and their presentation in this manner, unfair. An additional term that causes problems is one in which residents agree that any money they for rent or rent in advance can first be used to pay any outstanding service charges. If an electricity bill has been overlooked, this clause allows park operators to take a resident’s rent payment and apply it to the electricity charges. The resident subsequently receives a letter informing them that their rent is in arrears.

### **Electricity and Penalties**

Currently the law states that the amount of electricity service availability payable by a resident whose electricity is supplied by the park owner is limited by the amount of amps supplied to the site. Notwithstanding the right of residents to upgrade or replace their dwellings, older caravans are limited to drawing 16 amps, but some park operators are charging at the rate of 32 amps. This is because the amount payable is determined by the amount supplied to the site, regardless of the ampage capabilities of the dwelling.

## **ARPRA**

Direct customers of the electricity providers have to pay the full service availability charge, despite the fact that the park's infrastructure only provides 32 amps to the resident's site.

There is no statutory obligation on the park operator to upgrade the electricity infrastructure within his park, apart from the general obligation to maintain the common areas.

### **Penalties**

The penalty system currently in use in the Parks Act requires any offence be investigated by Fair Trading, who then conducts any subsequent prosecution. If the Tribunal finds a park operator has a case to answer, the matter is referred to the Director-General. The penalty system is ineffective due to its infrequent use. No park operator seriously thinks he is at risk of being prosecuted or fined. ARPRA believes that the current system contains redundancies. The Tribunal hears the case and decides that the park operator has breached his obligations in a manner serious enough to warrant referral to the Director-General. There is no reason why the same matter should be re-investigated by Fair Trading. ARPRA supports the proposition that the Tribunal should have the power to impose penalties when the park operator is found to have committed serious non-compliant activities.

### **Water Charges for Permanent Residents**

Below is a document produced by Mid Coast Tenants' Advice and Advocacy Service concerning water charges for permanent residents of residential parks, including discussion on the imposition of sewerage charges.

#### ***Water Charges for Permanent Residents***

The New South Wales Government has produced a document titled – “Best-Practice Management of Water Supply and Sewerage – Guidelines”. According to the NSW Office of Water Website, the Guidelines produced in August 2007 are the current guidelines, and the ones referred to in this article. These Guidelines for Best-Practice Management of Water Supply and Sewerage have been published by the Minister for Water Utilities pursuant to Section 409(6) of the Local Government Act 1993.

## ARPRA

The guidelines encourage continuing improvement in performance and identify six criteria for best-practice management of water supply and sewerage. They also set out the outcomes that local government Local Water Utilities (LWUs) need to achieve in order to be eligible for payment of a dividend from the surplus of their water supply or sewerage businesses.

Local water utilities are responsible for providing water supply and sewerage services to NSW non-metropolitan urban communities. Major water utilities such as Sydney Water Corporation cover defined metropolitan areas, and are regulated by IPART, the Independent Pricing and Regulatory Tribunal of New South Wales.

Thus, in order to be eligible for certain financial benefits, local water supply authorities such as local councils, must comply with the Best-Practice Guidelines published by the Department of Water and Energy. What does this mean for residential users who are permanent residents of regional residential parks in New South Wales? What is the impact on park residents of the impositions placed upon metropolitan authorities by IPART?

### Usage

The Residential Parks Act 1998 (the Act) stipulates that residents are to pay certain charges for water. These charges are the water consumption charges and water availability charges. The Residential Parks Regulation limits the availability charge to no more than \$50 per annum. If the calculated amount is lower than \$50, then the lower amount applies. The levying of these charges against a resident is dependent upon the residential site being individually metered.

Section 34 of the Act defines “water consumption charge” as a charge for water that is calculated only on the basis of how much water is used. The Act makes no mention of sewerage usage/consumption charges, or sewerage availability/access charges. As the CCIA’s document, “Water Charges for Permanent Residents” points out, the Parks Act stipulates “water consumption” rather than “water usage.” If the Government did not see fit to stipulate these charges, then it is reasonable to assume they did not mean for residents to have to pay them. It is interesting to note that the Residential Tenancies Regulation refers to water “used” rather than “consumed.” The wording has been specifically altered for the Parks Act.

## ARPRA

Further, Section 36 of the Parks Act gives clarification by making it clear that the park owner is responsible for all other rates, taxes and charges payable that are not expressly stipulated as the resident's responsibility.

In other words, if it is not mentioned as being a resident's obligation, then it is a park owner's obligation. Section 39(2) finally clears this up by saying that residents in a park cannot be charged any more for water consumption than they would pay if they were direct domestic customers of the water supply authority, that is, if they lived on a normal residential block in a house, unit, villa, etc.

The Caravan & Camping Industry Association (CCIA) has stated—

“The park owner in order to forward waste water charges onto a resident must provide evidence as to such levies by the water supplier on ordinary domestic customers. If the local water supply authority charges for wastewater discharge to direct domestic customers park owners can charge the wastewater discharge as a water consumption charge.”

Let us assume for a moment that we believe this statement to be correct. What charges does a direct domestic customer have to pay?

The answer is that direct domestic customers do not pay for sewer usage or waste water usage charges, whatever you want to call them, because their water supply authority is either bound by the pricing framework imposed by IPART, or by the need to comply with the Best-Practice Guidelines. IPART's "*NSW Water Fact Sheet 4 - Review of Prices for Sydney Water Corporation's water, sewerage and stormwater services*" indicates sewer or waste water usage charges are levied only against non-residential properties, and obviously excludes direct domestic customers, who are residential customers.

The Best-Practice Guidelines state that in order to comply with the *COAG Strategic Framework for Water Reform, National Competition Policy* and the *National Water Initiative*, each LWU needs to achieve, among other things, an "Appropriate sewerage tariff with a uniform annual sewerage bill per residential property..."

A uniform annual sewerage bill precludes a bill based on usage, because usage bills are incapable of being uniform.

## ARPRA

It appears then that because Water Supply Authorities cannot levy such charges against direct domestic customers, permanent residents of residential parks cannot be charged these either. Residential Parks are not classified as direct domestic customers. The Local Government (General) Regulation 2005 – Regulation 121 states—

### “LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - REG 121

121 Land used for caravan park or manufactured home not to be categorised as residential (section 516 (2))

If the dominant use of land is for a caravan park or a manufactured home estate, the land is not to be categorised as residential for rating purposes.”

Once you accept that the water authorities cannot pass on sewer usage charges to residential customers, the issue of whether or not the CCIA is correct becomes moot. The charge will never be passed on.

Having said that, though, I would also like to note the following quotes from the CCIA in respect of waste water usage charges -

1. “This issue was dealt with in previous decisions in the Supreme Court in *Faulkner v Denovan SCNSW (1996)* under the Residential Tenancies Act 1987 (caravan park provisions with wording different to that in the Residential Parks Act 1998)”
2. “After the decision in *Faulkner v Denovan SCNSW (1996)* the sections in the subsequent Residential Parks Act then no longer referred to “water usage” preferring the term “water consumption”, with that term being specifically defined in section 34.”
3. “...the Residential Parks Act 1998 limits the amount that could be charged under section 39 (2) (a)—i.e., the amount that the resident would have been required to pay for water consumed if the resident were a direct domestic customer of the relevant water supply authority.”

## ARPRA

### Service Availability

On water availability charges, Section 39(2A) of the Residential Parks Act states—

“If the resident is billed by the park owner, the amount that the resident is required to pay in relation to water availability charges is the lower of the following amounts:

- (a) the amount paid by the park owner in relation to the water availability charges for the park divided by the number of residential sites in the park,
- (b) the amount prescribed by the regulations.”

The Residential Parks Regulation limits the amount to \$50 per annum—

“18 Water availability charges: section 39 (2A) (b)

For the purposes of section 39 (2A) (b) of the Act, the prescribed amount for water availability charges in relation to the year commencing 1 July 2006 and any subsequent year is \$50 for the year concerned.”

The “number of residential sites in the park” means all the sites, whether short- or long-term. The Parks Act does not differentiate between the two types.

The CCIA had this to say about sewer availability—

“When this [the \$50 water availability limit] was introduced in April 2006 the Government said that it included water and sewer availability charges. However, the Consumer, Trader and Tenancy Tribunal in *Steed v Frisdorn Pty Ltd* (2008) NSWCTTT 1088 said that it did not include sewer availability. We approached Government and they have agreed that the Residential Parks Act 1998 should be amended to confirm that sewer availability is included with the water availability charges...The present position in relation to water availability is that we have advised our members that Fair Trading have agreed that we can impose the charge but we should be aware that the CTTT has ruled that the sewer availability is not included.”

## ARPRA

My research in respect of a Government alleged declaration of availability charges including sewer availability does not support this statement, with the exception of a small line in Fair Trading's Residential Park Living Booklet, directed at Residents—

*"You may also have to pay some water and sewerage availability charges."*

Let us try and work out what this means.

We have already learned that residential customers of the water supply authorities pay for sewer access or availability. This is the "uniform annual bill" mentioned earlier. However, the Act's restriction concerning "direct domestic customers" only applies to usage charges, not availability charges.

In *Walsh v Beachfront Holiday Resort (Residential Parks) [2008] NSWCTTT 1435 (3 December 2008)*, the Tribunal wrote—

"It is argued by the Park owner that the resident is required to pay for delivery of water to the site, "water availability", and removal of water from the site, "sewer availability" ... The Park owner also refers to a publication of the NSW Office of Fair Trading dated March 2006, titled: "Reforms for Residential Park Law", which in part states:

*"Residents will be responsible for the payment of their share of water and sewerage availability charges as well as the cost of their water consumption".*

"I am not persuaded by the Respondent's argument that the use of the word "charges", being plural leads to a very wide interpretation of this issue to the extent that "water availability" is deemed to include "sewer availability". Certainly, this tribunal is not bound by guidelines published by the NSW Office of Fair Trading. If it was the intention of the NSW Parliament to include "sewer availability charges", with the "water availability charges", this could easily have been included in the amending legislation."

## ARPRA

In *Steed v Frisdorn Pty Ltd (Residential Parks)* [2008] NSWCTTT 1088 the Tribunal again referred to Fair Trading's Reforms Fact Sheet, stating—

“It is however not an aid to statutory interpretation under the Interpretation Act, and cannot replace the legislation and the interpretation of the ordinary natural wording of the legislation. Indeed, as submitted by the applicant's representative, there is an appropriate disclaimer on the back page, in terms “This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.”

Thus, whatever distinction there may be between “water consumption” and “water usage”, the intention from the Explanatory Notes to the legislation would appear to ensure that “water availability” does not include “sewerage availability.”

It is apparent that the Tribunal views the Fair Trading sheet as unreliable, and at best it relies on old legislation not mirrored in the Parks Act, which is “...clearly completely new legislation, using different terminology.”

The Residential Parks Act does not stipulate Sewerage Availability as a charge that the Resident is required to pay. It is therefore an obligation on the Park owner, if their Water Authority charges them.

## **Other Changes to the Wording of the Act**

Section 16 (1) “Applications relating to breach of or a dispute under residential tenancy agreement”

The 30-day time limit is too restricting. ARPRA believes the limit should be amended to bring it in line with the new limits allowed in the Tenancies Act, which allows for three months to take action for a breach.

Section 16 (6) (d)

Compensation for non economic compensation is now negated by a Supreme Court Appeal. This section needs rewording to avoid Appeal restrictions. ARPRA supports the inclusion into the Act of protection for park residents against harassment and intimidation from the park operator or manager. ARPRA believes the inability of the Tribunal to award non-economic loss for stress and distress caused by harassment and intimidation will impact on the effectiveness of this legislation. A new approach is required.

### **Part 4 Rights and obligations of park operators and residents**

Section 20. The use of harassment and intimidation tactics by park operators and managers against residents is not adequately covered by a resident’s right to peace, comfort and privacy. Laws against this type of bad behaviour must be explicit. Unconscionable conduct needs to be clearly defined in the Act rather than relying on Apprehended Violence orders sought in the courts.

Queensland’s equivalent legislation provides the following—

“MANUFACTURED HOMES (RESIDENTIAL PARKS) ACT 2003 - SECT 96

#### **96 Harassment or Unconscionable Conduct**

The park owner for a residential park for which site agreements are in force must not engage in harassment or unconscionable conduct in the operation of the park or in acting as a home owner's agent to sell, or to negotiate the sale of, a manufactured home.

## **ARPRA**

### ***Examples of Harassment***

*using, or getting a third party to use, threatening or intimidating language or behaviour towards a home owner or prospective home owner for a site*

*engaging in conduct that would make a person feel unwillingly compelled to comply with the park owner's request or demand*

### ***Examples of Unconscionable Conduct***

*taking unfair advantage of the park owner's superior bargaining position relative to a home owner or prospective home owner for a site*

*requiring a home owner or prospective home owner for a site to comply with conditions that are not reasonably necessary for the protection of the park owner's legitimate interests*

*if it is reasonably apparent that a home owner or prospective home owner for a site can not understand relevant documents, taking unfair advantage of the home owner's, or prospective home owner's, lack of understanding in relation to the documents*

*exerting undue influence or pressure on, or using unfair tactics against, a home owner, prospective home owner for a site, or a person acting for a home owner or prospective home owner for a site*

Maximum penalty 200 penalty units.”

ARPRA asks that the Queensland legislation be used as a model for the development of an equivalent section in the New South Wales Act.

Section 74A needs to be strengthened in relation to false and misleading information.

For example –

“A park operator must not in advertising or in precontractual negotiations—

(a) indicate that the site rent will only ever increase in accordance with increases in the consumer price index; or

(b) indicate that the site agreement can only be terminated by the home owner.”

## **ARPRA**

ARPRA believes that some sections of the Parks Act that also operate as a term of every agreement, should make provision for penalties to be applied. For example, Section 21, which obligates a resident not to interfere with the peace, comfort and privacy of neighbours.

### **Section 39**

ARPRA believes that all references to water availability charges should be removed from Section 39. Water availability charges payable by the park operator is the cost of bringing water to the park boundary by the water supply authority. Water availability charges created within a park relate to the park's infrastructure, the maintenance of which is an operating cost of the park operator and not the resident. The infrastructure is an integral component of the park's common area, and the obligation to maintain and repair it remains with the park operator.

### **Part 6 Park Rules for Residential Parks**

Dispute resolution mechanisms for park rules should be located in the same place within the legislation as the legislation for park rules themselves.

### **Section 88 (6A)(b)**

Change "modifying the operation of" to "changing".

At a recent Tribunal hearing disputing existing park rules, the Member was prevented from making some obvious changes to the existing rules, by the wording of this section.

### **Section 90(3) (b)**

Change "modifying the operation of" to "changing"

### **Section 130A (4)**

Delete (4) completely and substitute instead "(4) The registered valuer must value the premises as if the park operator was continuing in operation."

# **Appendix**

The Survey Questionnaire



About This Survey

Thank you for taking the time to answer this survey by the **Affiliated Residential Park Residents Association (ARPRA)**.

Your feedback is important because it will help us:

- better protect you and your rights as a residential park resident;
- assess the affordability of residential parks for people on a limited income;
- assist the government with the review of the Residential Parks Act; and
- have a better understanding of the industry in general.

This survey should only take about five minutes of your time. Your answers will be completely anonymous.

If you have any questions about the survey, then please contact us at [support@arpra.org.au](mailto:support@arpra.org.au) or call 1300 798 399.

**Basic Information**

Let us start off the survey by answering some basic questions about your experience living in a residential park.

1. What regional area do you reside in?
  - Albury Wodonga
  - Blue Mountains
  - Central Coast
  - Great Lakes
  - Hunter
  - Illawarra
  - Mid North Coast
  - Newcastle
  - North Coast
  - Port Stephens
  - South Coast
  - Sydney
  - Tweed Heads
  - Western NSW

## ARPRA

2. Please indicate your age bracket.
  - 18 to 29
  - 30 to 41
  - 42 to 54
  - 55 to 69
  - 70+
3. Are you currently receiving a pension?
  - Yes
  - No
4. Is this the first time you have lived in a residential park?
  - Yes
  - No

### Site Fees

This section of the survey focuses on site fees and how the CPi should affect it.

5. How much is your weekly site fee?
  - Below \$80
  - \$80-\$99
  - \$100-\$119
  - \$120-\$139
  - \$140-\$159
  - \$160 or higher
6. On average, what percentage of your weekly income goes towards paying for site fees?
  - 10%
  - 20%
  - 30%
  - 40%
  - 50%
  - 60%
  - 70% or more
7. Do you think site fee increases should be based only on the Sydney CPi?
  - Yes
  - No
8. Do you agree with the idea that the park owner should be the one to apply to the Tribunal, if they want an increase that is more than the CPi?
  - Yes
  - No

## ARPRA

9. In the current Residential Parks Act, residents have the burden of proof to prove that a rent increase imposed by a park owner is excessive. Should the law be changed so that it becomes the park owner's responsibility to prove that his rent increase is not excessive because his costs have risen higher than the CPI?
- Yes
  - No

### Tribunal Process

This part of the survey wishes to explore your experiences before a Tribunal, if any.

10. Have you ever fought a rent increase or settled any other matter in the Tribunal?
- Yes
  - No (Please go to question 13)
11. How easy is the current Tribunal process for fighting a rent increase?
- Easy
  - Cumbersome
  - Quite difficult
  - I wouldn't do it without representation.
12. Please choose the words that best describe your experience at the Tribunal. (Please tick all that apply.)
- Good
  - Bad
  - Boring
  - Interesting
  - Understandable
  - Confusing
  - Fair
  - Unfair
  - Lengthy

### Residential Park Living

This section of the survey aims to establish how you feel about the facilities of the park, as well as its rules and regulations.

13. Should a park owner be allowed to control what you may be able to do to your home? (E.g., the type of plants you may have, the colour you may paint your home, and the inclusion of awnings or any other fitting.)
- Yes
  - No

14. Should a park owner be allowed to control the types of pets you have?  
 Yes  
 No
15. Should all parks have individual private letter boxes?  
 Yes  
 No
16. Do you have to pay to use the park's facilities (e.g., bowling greens, pool, community hall or tennis courts)?  
 Yes  
 No
17. Do you think that live-in owners or managers should also be made to abide by the park rules?  
 Yes  
 No
18. Have you experienced interference in a home sale by a park owner?  
 Yes  
 No
19. If you bought a pre-loved home, did you have to see the manager first?  
 Yes  
 No
20. Currently, a park owner does not have to consult you about selling the park to a particular person/company. Should a park owner then be able to say to whom you sell your house?  
 Yes  
 No
21. In case of a home sale, do you think that assignments of site agreements should be automatic? (The assignment of a site agreement refers to the transfer of your site agreement to the person that has purchased your home.)  
 Yes  
 No
22. If the park owner fails to comply with orders of the Consumer, Trader and Tenancy Tribunal, should the Tribunal be empowered to impose substantial fines on the park owner?  
 Yes  
 No

23. How often should the Local Council inspect residential parks?
- Once a year
  - Once every two years
  - Once every three years
  - Once every four years
  - Once every five years
24. Do you pay for water usage?
- Yes
  - No
25. Do you pay for electricity usage?
- Yes
  - No
26. Do you pay the park owner or an electricity company for electricity?
- Park owner
  - Electricity company
27. If you get a rebate for any of these utility payments, which utility is rebated? (Please tick all that apply.)
- Water
  - Electricity
28. Should a park owner be made to upgrade his electricity or water supply if residents are receiving below-standard supplies?
- Yes
  - No

**Residential Park Residents Committees**

This section of the survey aims to determine if there is a need for resident committees in residential parks and the scope of their support or function.

29. Should some sort of committee be compulsory?
- Yes, we should have a committee composed of residents only.
  - Yes, we should have a committee composed of both residents and park managers.
  - No
30. Should such committees have the power to make certain decisions that affect all residents (e.g., on rent increases or landscaping)?
- Yes
  - No

### Residential Park Owners and Managers

The goal of this section of the survey is to find out your opinion on how the law should change to make park owners more accountable for their decisions and actions.

31. Should the Residential Parks Act be changed to provide for the Consumer, Trader and Tenancy Tribunal, upon application, to impose the penalties set out in the Residential Parks Act instead of the Commissioner for Fair Trading?
- Yes  
 No
32. Should all park managers and operators be trained in residential park operations?
- Yes  
 No
33. Would you support the introduction of a training course based on an assessment of the park operator's knowledge of the Residential Parks Act and council requirements, their qualifications and skills, and the number of years they have been in the industry?
- Yes  
 No

### Disclosure of Information to Prospective Residents

This section of the survey focuses on the rights of prospective residents to any relevant park information before the sale.

34. Currently, the Residential Parks Act Section 73(3) says that certain documents (e.g., park rules, question-and-answer materials, information on a resident's right to occupy the site on a leasehold basis, etc.) must be given to a resident when signing a site agreement.
- Should this part of the Act be changed to make it mandatory for the park owner to supply these documents to a prospective resident at least ten days before the resident signs the residential site agreement?
- Yes  
 No
35. Should a prospective resident be allowed to view the public register about a park or contact an association that could provide relevant information?
- Yes  
 No

**ARPRA**

36. Do you have additional comments or concerns? Please let us know.

---

---

---

---

---

**Thank you for your time.**

# Locations



**1300 798 399**

**[www.arpra.org.au](http://www.arpra.org.au)**



Proudly Printed by Kwik Kopy Newcastle  
38 King Street Newcastle 2300  
(02) 4926 5188  
[print@newcastle.kwikkopy.com.au](mailto:print@newcastle.kwikkopy.com.au)

ARPRA  
PO Box 8085  
Port Macquarie 2444  
© 2012