RESIDENTIAL PARK CONTRACT REVIEW

NOVEMBER 2024

Table of Contents

1. Introduction

The Consumer Policy Research Centre (**CPRC**) commissioned advice to review a sample of contracts between residential park operators and residents in Victoria. These contracts are regulated under Part 4A of the *Residential Tenancies Act 1997* (Vic) (**the Act**).

Twelve (12) site agreements[1] dated between 2003 and 2024 have been reviewed, which relate to residential parks located in both metropolitan and regional areas of Victoria. Some of the residential parks are operated by large corporations, whilst others are operated by smaller businesses. A summary of these contracts with reference numbers is provided at **Annexure 1.**

Several contract terms and practices have been identified in these site agreements that, in the advice provided, could lead to unfair outcomes for residents.[2] Contract analysis has focused primarily on issues relating to fees and charges, calculations of agreed market value, roles and responsibilities of residents and management, dispute resolution processes, rent increase calculations, resident liability, restrictive rules for residents, exit and sales processes, and other selected matters.

Several trends and common practices have been identified across the site agreements relating to complexity and transparency, drafting, variety of fees charged, and different methods of exit fee calculations (including deferred management fees (**DMFs**)).

This report explains why law reform is required to address unfair practices in the residential park industry and provides recommendations for the content of a potential standard form contract.

Limitations of this report

The analysis in this report has not included a comprehensive analysis of every term of the site agreements, nor has there been any determination about whether the terms are likely to constitute breaches of existing laws, such as the prohibition against unfair contract terms.[3] This report does not suggest that any operator has contravened, or is contravening, any law or regulation.

Rather, this report seeks to identify examples of contract terms and practices that could potentially lead to unfair or unfavourable outcomes for residents, and key themes. It does not seek to identify every term or practice that could potentially lead to unfair outcomes for residents.

Several of the site agreements provided by CRPC were undated, so the analysis has relied upon instructions from CPRC about the relevant date. The relevant contracts are noted in Annexure 1. Several site agreements provided also were not signed by one or more parties or were missing annexures. As such, the analysis may not have a full picture of the terms agreed to between the parties, or the matters disclosed to the resident. The analysis is based on the content of the documents provided.

Nothing in this report is intended to be (or should be taken as or relied upon as) legal, financial or real estate advice. Readers of this report should seek their own professional advice as needed.

[1] Contracts were referred to as site agreements, leases, license agreements, residential site agreements, Part 4A agreements and residency licence agreements. The term 'site agreements' has been used when referring to the contracts throughout this report.
[2] The Act refers to 'site owners' and 'site tenants'. The site agreements use various other terms to describe site owners and site tenants. The terms 'operators' and 'residents' have been used throughout this report.
[3] *Competition and Consumer Act 2010* (Cth) Schedule 1 Part 2-3 and *Australian Consumer Law and Fair Trading Act 2012* (Vic) Part 2.2.

2. Site agreement terms

There was significant variation in terms across the site agreements, without any particular trends in regional parks compared to metropolitan parks. At a high level, it appeared that site agreements dated post-2018 contained less terms that could lead to unfair outcomes than earlier contracts. This is likely in response to the reforms to residential parks in the *Residential Tenancies Amendment Act 2018* (Vic) (**the Amendment Act**), which introduced (among other things) several prohibited terms. The post-2018 contracts contained the prescribed cooling off notice required under section 206J of the Act, which provides residents with a 5 business day cooling off period.

The analysis sought to identify terms noted in this report that are likely to be 'prohibited terms' under the Amending Act.[4] Section 206FB of the Act provides that these 'prohibited terms' in existing agreements are void and unenforceable. Section 206F of the Act also provides that a term included in a site agreement is void to the extent that:

- it is inconsistent with the Act;
- it purports to exclude, restrict or modify the application of, or the exercise of a right conferred by, the Act; or
- is inconsistent with any prescribed terms.

Please refer to commentary in section 4 of this report about potential issues residents may face in identifying and enforcing their rights under these provisions.

Fees and charges

There was significant variation in the types and structure of fees and charges throughout the site agreements. Every site agreement contained a periodic site fee or rent, which was generally charged monthly. As noted elsewhere in this report, there was significant variation in the calculation of rent increases across the site agreements. Other fees charged varied between site agreements, even if the site agreements related to the same park location. A high-level summary of the different types of fees charged across the site agreements is provided in **Annexure 2.**

Residents generally needed to refer to multiple clauses in their site agreement to understand the range of fees and charges payable, and the calculation of these fees and charges. Often it would be difficult (or impossible) for a resident to calculate the actual amount of fees or

[4] Section 206FA of the Act, regulation 73 of the *Residential Tenancies Regulations 2021* (Vic) (**the Regulations**).

charges, for example, because the fee was calculated as a percentage of a future, unknown amount (such as the dwelling[5] sale price).

Fees and charges were generally described using technical or legal language. An example of process required to determine the 'administration fee' payable for selling a dwelling is provided under Contract 1 below.

Example 1 – Calculation of Administration Fee

- Clause 7(c) provides that the resident must pay the Administration Fee to the operator upon the settlement date of any on-site sale.
- Clause 1.1 defines Administration Fee as the amount specified in Item [blank] of Schedule 1 multiplied by the Part 4A Dwelling Sale Price, to be paid in accordance with clause 7.
- Schedule 1 Item 13 specifies the Administration Fee as 1.1% (including GST).
- Clause 1.1 defines Part 4A Dwelling Sale Price as the equivalent to the higher amount of the price paid for the sale or transfer of the Part 4A Dwelling, or the Agreed Market Value.
- Clause 1.1 defines Agreed Market Value as the average market value of similar dwellings to the Part 4A Dwelling sold at the Part 4A Park during the previous 12 months, or the price determined by an independent valuer with at least 5 years' experience appointed by the parties with each party paying 50% of the valuer's costs.
- Clause 7.1 further states that Schedule 2 of the site agreement sets out the amount of the Administration Fee, the purpose for which the fee is charged the basis on which the fee is calculated and adjusted, and the circumstances in which the fee may be reviewed.
- Among other things, Schedule 2 states that the basis on which the charge is calculated is in reference to the 'costs incurred by the park owner in considering and the application for transferring the lease to the purchaser.'
- In the event that the resident has passed away, their legal representative would also need to refer to clause 10.2 to understand how the Administration Fee applies upon death of a resident.

<u>Comments</u>

The resident would need to refer to multiple clauses in the site agreement and schedules to understand the calculation of the Administration Fee. In any case, the price paid for the

[5] Part 4A dwellings were referred to as homes, park homes and other terms in the site agreements. The term 'dwelling' has been used throughout this report.

sale or transfer of the Part 4A Dwelling cannot be known at the time of entering into the site agreement, which means the amount payable for the Administration Fee also would not be known.

Where the fee is calculated by reference to the 'Agreed Market Value', presumably only the operator would know the average market value of similar dwellings to the Part 4A Dwelling sold at the Part 4A Park during the previous 12 months. This figure would be very difficult for the resident to verify. If the resident wanted the value determined by an independent valuer, they would need to pay 50% of the costs for this valuation.

There are also some inconsistencies between the site agreement, and the schedules. For example, clause 7(c) states the Administration Fee is payable upon the settlement date of any 'on-site sale', whereas Schedule 2 states the fee is payable upon the sale of the dwelling and transfer (or assignment) of the lease.

The explanation of the basis on which the charge is calculated is also curious. Schedule 2 refers to the costs incurred by the park owner in considering and the application for transferring the lease to the purchaser, yet there is no explanation as to why the Administration Fee is calculated as a percentage of the sale price. Does the operator spend more time considering applications for higher priced dwellings? If not, arguably the Administration Fee could be charged as a flat fee.[6]

As noted above, there was significant variation in the types of fees payable across the site agreements. Often there were differences in fees payable by residents in parks owned by the same operators, or even within the same park. Examples of the types of fees payable in the site agreements are listed below:

- Deferred management fee
- Site fee/rent
- Electricity, gas and water charges
- Local government, statutory or other authority rates, charges and taxes
- Share of independent valuer fee for determining agreed market value
- Sale administration fee
- Selling commission (if resident chooses operator to sell dwelling)
- Fee for access key or access card[7]
- Legal fees or site agreement preparation fees[8]

[6] For example, a flat $550 selling administration fee is charged under Contract 7.
[7] This is now a prohibited term under section 206ZD of the Act.
[8] This is now a prohibited term under section 206FA(2) of the Act.

- Insurance premiums[9]
- Garbage collection and removal charges
- Connection of telephone service
- Additional charges for visitors who stay more than the agreed period (e.g. 14 days)
- Post box fee
- Gas bottle rental
- Caravan parking fee
- Share of mediation costs in the event of a dispute

The fees above do not include the purchase price of the dwelling or charges relating to the cost of any repair or improvement works carried out on behalf of the resident, liability under any indemnity or liability clauses, or relocation, maintenance, repair or removal of the dwelling. Most site agreements contained a combination of the fees listed above, but not all.

Regular fees (such as site fees/rent) were mostly billed monthly or fortnightly. One site agreement permitted site operators to change payment intervals for utilities at their discretion.[10] Non-payment of fees and charges gave rise to penalty interest charges in one agreement.[11]

The variation in fees and charges, combined with the lack of transparency in the calculation and quantum of these fees, could lead to unfair outcomes for residents. This is particularly the case where a significant portion of residents are retired and reliant on fixed incomes, which can make it difficult to cover unexpected increases in costs.

Calculation of rent increases

There was a variety of methods used to calculate rent increases across the site agreements. Generally, the site agreements referred to an annual Consumer Price Index (**CPI**) increase but gave the operator the option to increase the rent more than this amount. Most operators also calculated rent based on the number of occupants in the dwelling, and reserved the right to increase the rent if the number of occupants increased.

Examples of periodic rent increase calculations are provided below:

[9] Section 206FA now prohibits any term that requires the site tenant to take out any form of insurance. Regulation 73 prohibits any term that makes the resident liable by default for an insurance excess to be paid under a policy of the operator. However, section 206FA does not appear to prohibit operators from charging a contribution towards insurance premiums for insurance held by the operator.
[10] Contract 7.
[11] Contract 4 provides that interest will be payable by the resident on any amount not paid on or before the relevant due date on a daily basis and at the rate as fixed as the penalty interest rate under the *Penalty Interest Rates Act* from time to time, plus 2% per annum.

Example 2 – Calculation of rent increases	
Contract 1	Rent is increased by 3.5% or the CPI, whichever is higher, on 1 July each year. Operator can elect to increase rent by any amount in any year.
Contracts 2 and 6	Rent is increased by CPI for quarter preceding review divided by CPI for quarter preceding the last rent adjustment. Operator can choose not to increase the rent, but the foregone rental increase may be added to the next year's rent increase.
Contract 5	Same park as Contract 2, so has the same rent increase calculation as above. However, in addition, every 3 years the operator or resident may also elect to carry out a 'review of rental to market'.
Contract 3	Rent increase calculated in accordance with the increase in market value of the site, or the increase in CPI for the period for since the last rent increase, whichever is greater. Market value of the site is determined by agreement or by an independent valuer.
Contract 4	Rent increased based on CPI on 30 June after commencement date, then a market review increase the following year. Rental increases alternate between market reviews and CPI reviews each year. The operator can also vary site fee 'to an amount which it considers to be the market fee for the site'. The resident can dispute the market fee review, and the dispute is referred to a valuer. The valuer's costs are to be paid equally between the operator and the resident. The valuer must take into account certain matters such as the price paid for the site.
Contract 7	Rent is reviewed on 1 January. Rent increased based on an annual CPI review. The CPI review is the previous rent plus the percentage of that rent which is equal to the percentage increase (if any) in the CPI determined by the difference between the CPI for the immediate prior quarter and the same quarter in the previous year, plus any increase in statutory charges divided by the total number of sites in the park. Market reviews also occur every 3 years. Market reviews allows the operator to determine new rent as the market rent as determined by the operator. Market rent means the best annual rental that can reasonably be obtained for the site whether occupied or unoccupied. It appears that CPI reviews do not occur in market review years.
Contract 8	Rent is increased greater of 3.5% and CPI on 1 July each year. Rent can also be increased to cover any unforeseen increases in the cost of operating

	and maintaining the park. The operator also appears to have separate contractual right to increase rent for any reason by giving 60 days' written notice. Rent can also be increased if the supply of the residential site under the agreement is considered a 'taxable supply' for GST purposes by giving 60 days' notice to the resident.
Contract 9	Site fee is adjusted using 'market based' factors. Numerous factors are taken into consideration including pricing of utilities, insurance, employment, cost of running and maintaining park facilities, improvements to park facilities, competitive price movements and general market conditions.
Contract 10	Rent increases annually on 1 July or other date determined by the operator. Rent is increased by 3.5% or CPI, whichever is greater. If government or other statutory authority changes the way it levies rates, there will be an equitable adjustment to rent or other fees and charges.
Contract 11	Rent increased on 1 October annually. The increase is calculated as the current site rent x CPI this year/CPI last year. The site agreement states that the adjustment will not be made if it would result in a decrease in rent payable.
Contract 12	Rent increases by 3.5% annually. Same park as Contract 3.

We note that Division 3 Part 4A of the Act provides minimum notice periods for fixed and non-fixed rent increases, and enables residents to complain to the Director of Consumer Affairs Victoria (**CAV**) or apply to the Victorian Civil and Administrative Tribunal (**VCAT**) about excessive rent. Some site agreements also set out internal dispute resolution processes in the event that a resident disagrees with a non-fixed rent increase. Where this involved an independent valuer, the resident was generally required to pay 50% of the valuer's costs. These processes can be costly, time consuming and complex for residents to navigate. Furthermore, a rental increase could have an unfair impact on residents without reaching the threshold of being 'excessive' under the Act.

Agreed market values

Several common fees in site agreements are typically calculated on the sale price of the dwelling, such as selling commissions, DMFs and administration fees. However, in the event that a dwelling is not 'sold', but rather the lease is transferred or assigned, or the dwelling is sold below market rates, these fees are generally calculated by reference to the 'agreed market value'. Market value was also sometimes considered in relation to rent increases, as discussed above.

Several site agreements (such as Contracts 1 and 2) attempt to deal with this issue by defining the agreed market value as the average sale price achieved for similar dwellings over a certain period leading up to the sale. However, as noted above, this is information that

only the operator will have access to and is difficult for a resident to verify. Alternatively, some site agreements set out a process for independent valuation for determining the agreed market value. However, these costs are generally shared between the resident and the operator. Given the power imbalances between the parties, and lack of information about previous sales available to residents (or their legal representatives), these processes have the potential to lead to unfavourable outcomes for residents.

Rights and responsibilities of residents and operators

The site agreements generally contained much more detail about the responsibilities of residents, compared to the responsibilities of operators.[12] The responsibilities of operators in the site agreements usually related to matters such as:

- not interfering with quiet enjoyment;
- keeping common areas clean, tidy and maintained;
- repair, maintenance and insurance of facilities;
- paying rates, charges or expenses that don't relate to the resident;
- complying with the Act;
- providing access to park and common areas; and
- making reasonable efforts to ensure residents comply with rules.

An example of operator responsibilities from Contract 10 is set out below:

Example 3 – Operator responsibilities
Contract 10 provides the following details about the operator's responsibilities: • Respect the resident's home ownership and right to privacy and peace and quiet. Make sure common areas and facilities comply with relevant health and safety laws. • Keep all common areas, facilities, gardens, roadways, paths and recreation areas clean, tidy and in good repair. • Maintain the garden in the front of the resident's home as well as common gardens, lawns and trees. • Repair and maintain common areas and facilities keep disruptions to minimum. • Keep roads in good condition and street lights on at night. Install electricity and water services. If there is a problem with the supply of electricity or water, the operator will work to fix it.

[12] Division 6 Part 4A of the Act sets out the general duties of site owners, which relate to matters such as providing certain information, quiet enjoyment, keeping the park clean, excessive usage charges, and maintaining and repairing rented sites, and maintaining communal areas.

- Arrange for garbage bins to be collected.
- Take out appropriate public liability insurance to cover issues that may occur around the park.

The rights of residents are sometimes not covered in the site agreements, or if they are, they are described in basic terms.[13] For example, the resident has the right to occupy and use the site and have the dwelling located on the site, is entitled to use the common access ways, areas and other facilities of the village, and to quiet enjoyment of their home. In some site agreements, these rights are subject to complying with the agreement and park rules. Unlike aged care, there is no universal charter of rights or similar that applies to residents of residential parks.[14]

A common area of dispute between residents and operators is responsibility for maintenance, despite the Act attempting to clarify responsibilities in this regard. Section 206ZW of the Act provides that operators must maintain, repair and keep clean and tidy all communal bathrooms, toilets, laundries and other communal facilities in the park. Section 206ZV of the Act provides that operators must keep common areas, facilities, gardens, roadways, paths and recreation areas in the park clean and in a safe condition. Section 206ZA also provides that operators must maintain in good repair any site occupied by a site tenant, including any structures or fixtures owned by the site owner.

However, site agreements and park rules sometimes define terms such as ‘common area’ or ‘site’ differently to the Act, which can lead to confusion. For example, Contract 7 defines ‘common area’ as any part of the park used by patrons or occupants of the park common with each other and with the operator. By comparison, the Act defines ‘common area’ as any area in which facilities are provided for the use of renters, residents or site tenants otherwise than as part of the Part 4A site.[15]

Generally, residents are responsible for keeping the dwelling and any ‘installations’ in good repair. However, it can be unclear the extent to which driveways, gardens, pathways and other areas are within scope. For example, Contract 4 states that residents must keep the dwelling and ‘any other installations located in or around the site’ in good repair, whereas Contract 7 states that the resident is responsible for maintaining fences constructed on boundaries an all pathways and driveways (as well as maintenance and appearance of their home and site generally). The standard to which residents must maintain their dwelling and

[13] Section 206B of the Act sets out the rights of site tenants, which are subject to the Act and the terms of a site agreement.
[14] The Charter of Aged Care Rights sets out the rights of all people receiving Government-subsidised aged care services. The Charter applies regardless of the type of care or service: Charter of Aged Care Rights | Aged Care Quality and Safety Commission.
[15] Section 3 of the Act.

site is often at the owner's discretion or in keeping to the 'park standard'. For example, an information sheet attached to Contract 7 states that residents must maintain their dwelling and site to 'A high standard, to the Park owner's satisfaction'.

The responsibilities of residents are typically described in detail in the site agreement and park rules. Usually, residents agree to comply with any park rules in the site agreement itself. Residents are also required to observe park rules made in accordance with the Act under section 206ZQ of the Act. In some cases, the operator has broad rights to rectify any breaches of the resident's obligations, and to seek reimbursement for any costs incurred. Examples of resident obligations include:

- Every year the resident must provide current certificate from a reputable pest control company that dwelling and site are free from white ants.
- Resident must ensure the dwelling on site, any other structures and use of site complies with planning permits and development requirements.
- The resident must maintain and replace all improvements on the site, including the dwelling, fences and driveways.
- The resident is responsible for rectifying issues identified by a building inspector, including water ponding under unit, plumbing, roofing, carports, verandas, steps, handrails, tie downs, smoke detectors and extinguishers and condition of gardens and outbuildings.
- The resident must ensure that their hot water unit, heater and stove are serviced at least every 3 years and receipts are given to the operator.
- The resident must, at the cost of the resident, at all times observe all fire safety requirements including installation and maintenance of smoke alarms, a fire extinguisher and fire blanket.
- The resident must maintain home and rear garden neat and tidy to general standard of community, and maintain exterior of home including paintwork, timber, roofing, guttering, and external blinds. However, resident must obtain permission before altering anything externally to home including paint, gates, verandas etc. If the resident makes alterations without permission, the resident can be asked to return home to original condition or reimburse operator to do this. The resident must also get approval before changing their front garden.

Further commentary on unnecessary or restrictive rules for residents is provided below.

Unnecessary or restrictive rules for residents

Some of the site agreements provided had the current park rules attached as an annexure. Under section 206ZY of the Act, an operator may from time to time make rules relating to the use, enjoyment, control and management of the park. This section provides a non-exhaustive

list of the matters that park rules may cover, such as the keeping of pets and disposal of refuse. Operators are required to provide a copy of the rules to a resident before entering into a site agreement with resident, must take reasonable steps to ensure the rules are observed by all residents and ensure that the rules are reasonable and are enforced and interpreted consistently and fairly.

Section 206ZZ provides that operators must consult with residents in respect of proposed changes to park rules. This involves providing details of the proposed amendment, allowing at least 14 days for residents to comment, and considering and responding in writing to written responses received from residents. Residents must be given 7 days' notice of any proposed change. However, there is no requirement that resident feedback must be incorporated into the rules.

If a resident considers that a park rule is unreasonable, the resident can apply to VCAT for an order declaring the rule to be unreasonable. This can be a complex and time-consuming process, as noted above.

Some of the rules for residents in the site agreements and park rules provided could be intrusive or unfair, depending on how they were applied. Topics covered in park rules provided to me included:

- Use of the site and common areas
- Interacting with other residents
- Committees and clubs, including elections
- Erecting structures
- Number of visitors allowed
- Number of days visitors can visit per year
- Locking side gates
- Number and use of vehicles, including caravans and trailers.
- Restrictions on vehicle speed, noise, repairing in certain areas, registration and unlicensed driving
- Hanging out clothing
- Displaying placards, signs or advertisements
- Pets and animals
- Playing outside games
- Locking doors
- Notifying management about absences
- Illness and infectious diseases
- Gardening, trees and shrubs
- Supervising children
- Cleaning barbecues and facilities

- Use of key cards and boom gates
- Playing musical instruments and singing
- Volume of radio and TVs
- Auctions or sales, including garage sales
- Parking
- Rubbish storage and collection
- Security surveillance
- Bicycles, roller blades, roller skates and skateboarding
- Alcohol consumption
- Painting and awnings
- Storage of flammable liquids or materials
- Clothing

Examples of some rules that could be particularly restrictive are provided below:

Example 4 – Examples of park rules for residents	
Contract 2	Residents cannot erect a TV antenna or clothesline without prior written consent from operator. Residents also cannot use or store any 'flammable liquids or hazardous materials', commit or permit 'any breach of any legislation', or 'unreasonably use the time of staff'. Residents must also notify the operator immediately of 'any illness or infectious disease' that is contracted by or in any way affects the resident or a visitor. Visitors can also only stay 3 weeks in any one year period unless the resident obtains written consent from the operator.
Contract 3	Residents are not allowed to play any musical instrument, 'system of sound amplification' or sing between 11pm and 8am. Residents must also keep rubbish receptacles closed and 'in a clean and odourless condition'. The park rules also state that no outdoor clothing apart from white t-shirts are to be worn in the pool.
Contract 4	Maximum of 2 people permitted on the site at any one time. Residents and visitors must be suitably clothed so as not to offend other residents when in common areas or visible within the site or dwelling.
Contract 5	Residents not to store any materials outside the home, commit or permit any breach of any legislation, display or permit to be displayed on the home any placard, advertisement or sign, or unreasonably use the time of staff of the park. Resident must also immediately notify the operator of any illness or infectious disease that is contracted by the resident, visitor or other occupant of the dwelling.

Relocation or replacement of dwellings

Only some of the site agreements provided set out the process for relocation or replacement of dwellings, for example, in the event of severe damage or destruction.

In Contract 4, the operator reserved the right at any time to require the resident to relocate their dwelling to an alternate site within the park. Whilst the operator agreed to reimburse the resident for 'Relocation Costs', this term was not defined. It was therefore unclear if the reimbursement would cover any reduction in property value from moving to less desirable location in the park, non-financial loss such as loss of quiet enjoyment, inconvenience or distress, or removalists costs (among others). Furthermore, if the relocation was required to comply with the policy of a competent authority, the relocation costs were to be borne by the resident.

Contract 8 provided the operator with the right to remove a dwelling if it was damaged and destroyed. However, the resident could only replace the damaged dwelling with a dwelling purchased form the operator, or a dwelling constructed by a builder and of a designed approved by operator. Furthermore, the site agreement would continue throughout this period, meaning the fees and charges (such as the site fee) remained payable during construction.

Contract 10 stated that if the dwelling was damaged so badly that it needs replacing, then the design of the new dwelling must be substantially similar to the original dwelling and builder must agree to complete work within 6 months of home being lost. The operator was also required to sign off on the design before construction commenced. As with Contract 8, the site agreement stays on foot during construction, meaning the resident is required to continue paying fees and charges, and continues to have access to the communal facilities.

These terms have the potential to result in poor outcomes for residents, in circumstances where the resident is likely to be experiencing distress from the loss or damage to their home. Residents would also be relying on cooperation from third parties, such as builders and insurers, to comply with some of the obligations set out in the site agreements, which would be largely outside of their control.

Resident liability, indemnities and releases

Most of the site agreements contained liability and indemnity clauses that made the resident liable for a broad range of loss and damage suffered by the operator. Rarely were these indemnities or liabilities reciprocal. Some site agreements also contained limitation of liability clauses that required the resident to release the operator from liability for certain loss or damage suffered by the resident.

Section 206FA of the Act prohibits any term that exempts the operator from liability for an act of the operator, the operator's agent or a person acting on behalf of the operator. Regulation 73 prescribes a term which requires the resident to indemnify the operator as a prohibited term.[16] These provisions would render most of the indemnity and release of liability terms in the site agreements void and unenforceable. Section 206FA also prohibits any term that requires the resident to take out any form of insurance, or provides the resident is liable to pay increased rent, a penalty or liquidated damages if they contravene the site agreement (among other things).

However, it is unclear whether these reforms would void the liability clauses in the site agreements altogether. For example, there are clauses that require residents to agree that they use facilities or the site at their own risk, they are vicariously responsible for the acts of their visitors, and they will not do anything that may increase the operator's insurance premiums.

Some examples of relevant clauses are set out below.

Example 5: Indemnity and liability clauses	
Contract 1	The resident is vicariously responsible for any act or omission by a person whose authority to be on the site was derived from the permission, express or implied, of the resident.
Contract 4	The resident acknowledges the risk of flooding, coastal erosion, wave impact and climate change, and holds the operator harmless in respect of any loss suffered from such events.
Contract 8	The resident must not do any act that may make insurance policy of the resident or operator invalid or may increase insurance premiums.

The legal ramifications of the 'prohibited terms' reforms in relation to existing agreements, insofar as they relate to liability, indemnities and releases, are technical legal questions that go beyond the scope of this report. Moving forward, given the importance of these terms, each party's liability should be clearly expressed and understood by the resident before entering into the site agreement.

[16] Regulation 73 of the Regulations.

Dispute resolution

Very few of the site agreements or park rules provided had any explanation of the internal dispute resolution processes in place at the park. However, some site agreements contained a requirement for parties to attend mediation and share the costs of the mediator. Whilst this requirement is not uncommon in contracts, this approach might not always be appropriate in circumstances where there is a significant power imbalance, or the resident is concerned about potential reprisals in response to making a formal complaint.

If the dispute resolution process was described in a site agreement, it was normally described in very high-level terms. For example, the park rules attached to Contract 7 stated that 'as a policy we prefer to deal with all complaints on a personal basis and as rapidly and efficiently as possible.' However, the park rules also required that all complaints be made in writing.

By comparison, Contract 1 set out detailed obligations that apply to both parties in the event of a dispute, requiring each party to use their best endeavours to resolve the dispute. This included a mandated mediation process, with each party to pay an equal share of the costs of the mediation.

It appeared that only the park rules attached to Contract 8 covered disputes between residents. These park rules encouraged residents to deal with all complaints on a personal basis with mutual courtesy and respect. If the complaint cannot be resolved, the manager can intercede to assist with resolution if requested.

It did not appear that any of the site agreements or park rules provided referred to the Dispute Settlement Centre of Victoria, or the resident's ability to contact CAV, in relation to disputes.

Exit and sales process

Any sale, transfer or assignment to a new dwelling owner is subject to approval in writing from the operator.[17] The operator's screening process was generally not set out in the site agreements, leaving discretion to the operator. Contract 7 required the resident to 'prove' to reasonable satisfaction of the operator that the incoming resident was 'respectable, responsible and solvent', among other things.

[17] Section 206ZZD of the Act provides that a resident must not assign a site agreement without the operator's written consent.

Most agreements expressly state that the resident's family, legal representatives or others do not have any right to take over the site agreement, for example, if the resident dies or moves to aged care. Any transfer or assignment of the site agreement (if approved by the operator) is normally considered a 'sale', with fees such as sales administration fees payable.

Residents can choose to engage a real estate agent or the operator to sell their dwelling. If the resident chooses to engage the operator, the operator charges a sales commission. Some site agreements had stringent requirements relating to the sales process, including:

- providing written notice to the operator of the resident's intention to sell;
- restrictions on displaying 'for sale' signs and the content of the sign;
- providing the operator the right to buy the dwelling at the final price that the resident is offered and willing to accept (i.e. the 'right of first refusal');
- requiring the resident to enter into a contract with the proposed purchaser in a form prescribed or approved by the operator;
- requiring the purchaser's deposit to be paid to the operator (rather than the resident) and allowing the operator to deduct all outstanding fees and charges (such as the DMF) from this deposit before passing on to the resident; and
- restrictions on access to dwelling for purposes of inspections or sale, such as requiring appoints to be booked with the operator in advance.

An example sales process from Contract 10 is set out below:

Example 6: Sales process
The resident must notify the operator in writing of their intention to sell. The resident can use a real estate agent or the operator as their sales agent, or sell their dwelling without a sales agent. The resident must pay an administration fee of 0.5%, and if the operator is selling the dwelling, must also pay a selling commission fee of 2.5% of the dwelling value on sale or transfer. The operator has the 'right of first refusal', meaning the operator has the right to buy the dwelling at the final price that the resident is offered and willing to accept. The written offer to the operator must remain open to the operator to accept for five business days. The resident must use a sale agreement provided by the operator or approved by the operator. The for-sale sign must be provided or agreed to by the operator. The purchaser's deposit is paid to the operator. Fees and charges payable on sale or transfer of the dwelling, and other amounts owing under the site agreement, are deducted from the deposit. These fees include the administration fee, selling commission, DMF, the

costs of any repairs or improvements carried out on the resident's behalf (as agreed) and any outstanding rent, fees or other charges.

These procedures for selling a dwelling in a residential park are more restrictive than most residents would have experienced in the past (for example, when selling a caravan, house or apartment). The success of the sale of a Part 4A dwelling is, in many ways, contingent on the cooperation of the operator.

Other issues

Several other notable issues arose during the review of site agreements, summarised below.

Death of resident

Some of the site agreements provided dealt with the death of residents in detail, whilst others did not. Most operators continue to charge rent and other fees following the death of a resident. The resident's legal personal representative and beneficiaries generally do not have any right to reside on the site or enjoy the rights granted to the resident, but may arrange for the sale or transfer of the dwelling.

Contract 8 went further, by providing the operator with the option to suspend rent payable, but on sale or transfer of the dwelling the legal personal representative was required to pay the suspended rent plus interest at 10.5%. Contract 9 had specific requirements for the sale of the dwelling, stating that if the dwelling was not sold within 3 months after legal personal representative provides evidence of authority to act to operator, then the legal personal representative must (at their cost) remove the dwelling by the specified date.

Term of site agreements

The terms of the site agreements varied significantly. For example, Contract 5 had a term of 99 years, whilst Contract 9 had no fixed term and was to continue until agreement terminated. Of note is that section 206H of the Act now requires an operator who enters into or renews a site agreement with a resident to offer a fixed term site agreement for a minimum term of 5 years if the site that is the subject of the site agreement is situated in a park that is registered as a caravan park on or after the commencement of section 10 of the *Residential Tenancies Amendment Act 2010.*

Sale of the park

Several site agreements contained clauses relating to the sale of the park. Under the clauses, the operator was generally able to sell the park without consent from residents. For example, Contract 7 provided that the operator may sell or assign its rights under the agreement subject to a proposed purchaser executing a deed to be bound by the terms of this Agreement. A similar clause was included in Contract 10.

Payment of GST

Several site agreements contained clauses that permitted the operator to recoup payment of GST from residents if the relevant supply under the agreement was later considered a 'taxable supply' for GST purposes. Whilst it is beyond the scope of this report to consider taxation issues in any depth, it seems reasonable that the GST status of the relevant supply, and responsibility for payment of GST, be clear between the parties at the outset.

Limitations on property rights

Some site agreements contain restrictions on resident's property rights. For example, Contract 1 limits residents' rights to lodge caveats and requires reimbursement for any costs incurred by the operator associated with removing caveats. Similarly, Contract 7 contains a clause that the resident must not lodge any caveat over the park or leased premises, and irrevocably appoints the operator as attorney to withdraw the caveat and the resident indemnifies the operator for any associated losses. The resident also agrees not to mortgage, encumber or charge the leased premises of the agreement. Contract 2 also contains a clause whereby the resident charges all of their rights, title and interests in the dwelling in favour of the operator as security for payment of the DMF.

Solar panels and batteries

Contract 10 was the only site agreement that specifically dealt with installation of solar panels and batteries. The agreement provided that the resident must obtain approval from the operator prior to installation, and costs were to be borne by tenant. The agreement also stated that excess solar (i.e. earnings from feed in tariffs) were not payable to the resident. The operator was also not liable for current or future costs associated with the solar panels or batteries. It is likely that, as energy prices continues to rise, residents will increasingly seek to install solar panels and batteries on their dwellings, and these arrangements will need to be dealt with in site agreements and/or park rules.

3. Trends and common practices

In addition to the issues highlighted above, observations on several trends and common practices across the site agreements relating to complexity and transparency, drafting, variety of fees charged, and different methods of exit fee calculations (including DMFs) are set out below.

Complexity and transparency

The site agreements provided were generally complex, lengthy and used technical language or 'legalese'. Residents often needed to refer to multiple clauses, definitions and schedules to understand their rights and obligations under the agreement, including fees payable. Site agreements were also sometimes inconsistent with schedules or other attachments, which made interpreting these site agreements more difficult and unclear. None of the site agreements provided had a single place setting out all fees potentially payable under the agreement. For example, in Contract 1 some fees were set out in the site agreement, some in Schedule 1 and some in Schedule 2. There was also some overlap between Schedules 1 and 2, but not entirely.

Some site agreements made a clear effort to address complexity and transparency, and attempted to draft clauses in plain language. For example, Contract 10 was written mostly in plain language with annexures explaining key aspects of the agreement. The worked example of the DMF calculation was particularly useful. The downside to this approach was that it did not necessarily read as a binding agreement, but could appear to some as something more akin to an information brochure.

The 'summary' at the beginning of the agreement also said that it set out 'the most important things you are committing to in this Agreement', which was not necessarily true. For example, the summary did not set out the resident's responsibilities, limitations on visitors or strict requirements relating to replacing dwellings (among other things). The summary also over-simplified some important clauses. For example, the summary said there is a 'one year guarantee' that the resident would not be required to pay the DMF if they 'decide to sell' within 12 months. However, the site agreement contained several conditions to the 'guarantee', including that the resident must provide written notice of their intention to sell and settle the sale within 21 months. The guarantee also did not apply if the resident moved to another community operated by the same operator.

Contract 12 contained an information booklet about the DMF. This booklet explained the purpose of the DMF under that particular arrangement, and gave example calculations of the DMF. The booklet described DMFs as 'a common style of purchase arrangements, designed

to offer a wider variety of accommodation and pricing options'. The booklet also claimed that the DMF charged was below that of many of the operator's competitors in the region. It would be difficult for residents to verify these types of claims.

Variety of fees and charges

As set out above, there was a significant variation in the fees and charges under the site agreements. The analysis required cross-referencing multiple clauses, definitions and schedules to understand the range of fees and charges payable. Often fees and charges were based on future, unknown amounts (such as the dwelling sale price), or subject to change at the operator's discretion. This makes it difficult (or impossible) for a resident to calculate the likely total cost of living in a particular residential park, or to compare options.

Some site agreements contained a large array of fees and charges, whilst other were more simplistic. For example, under Contract 1, the resident was required to pay:

- Administration fee
- Deferred management fee
- 50% of independent valuer fee (if required to determine agreed market value)
- Site Fee
- Electricity, gas and water charges
- Local government, statutory or other authority rates, charges and taxes
- Selling commission fees (if sold by operator)
- Fee for access key or access card[18]
- 50% of mediation costs (in the event of a dispute)

By comparison, under Contract 11, only a site fee was payable. Residents would benefit from simplifying and streamlining the types of fees charged, and the methods of calculation of these fees. Where possible, residents should ideally be able to understand the likely quantum of fees that will be payable when signing their site agreement and be in a position to compare housing options based on this assessment.

Different methods for exit fee calculations

In addition to selling commissions and sales administration fees, several site agreements required residents to pay a DMF upon exiting the park. The DMF is generally calculated on the sale price of the dwelling. However, in circumstances where the dwelling is not 'sold', but

[18] Now a prohibited term – section 206ZD of the Act.

is transferred or assigned, this fee can also be based on the agreed market value of the dwelling. Depending on the length of stay at a park, the DMF ranged from none to up to 39% of the sale price.

Only 7 of the 12 site agreements analysed for the purpose of this report contained DMFs. Some site agreements stated that the DMF was not payable if the resident decided to leave within the first 12 months (subject to conditions). Most site agreements provided that the DMF would accrue over a certain number of years to a maximum percentage. Sometimes the DMF would accrue at a higher percentage in the first year. In some cases, the same park had different DMF calculation methods. This means that, depending on the site agreement a particular resident signed, neighbours could be required to pay differently upon exiting the park.

Several examples of DMF calculations are set out below:

Example 7: DMF calculations	
Contract 1	4.4% of the dwelling sale price payable upon the sale and transfer (or assignment) of the lease = Maximum 4.4% DMF.
Contract 2	Dwelling sale price x 3% x by the number of years of residency (up to 12) = Maximum 36% DMF.
Contract 5	(Dwelling sale price x 6%) + (dwelling sale price x 3% x number of years of residency (up to 11 years or part thereof) plus GST = Maximum 39% DMF. If own dwelling for less than 1 year: (Dwelling sale price x 6%) plus GST.
Contract 6	Dwelling price x 3% x number of years of residency (minimum 2 years, maximum 12 years) = Maximum 36% DMF.
Contract 8	4% of the 'Fee Reference Price' per year, including any part of a year, up to a maximum of 5 years. Fee Reference Price is defined as greater of the sale price, and the Average Value or Market Value of the home = Maximum 20% DMF. The resident is not required to pay DMF if they sell and move to another home in the park or a related community. The resident also not required to pay the DMF if they sell the dwelling within 12 months (subject to conditions)

Some of the site agreements attempted to explain the purpose of the DMF. There was a lack of consistency across the site agreements as to what this fee represents, or the basis for its calculation. For example:

- Contract 1 stated that the DMF was charged in reference to the costs incurred by the park owner for capital improvements to the common areas and common facilities of the park, to benefit residents by maintaining and improving common facilities, ensure common facilities did not become derelict and outdated and to reimburse the park owner for ongoing management costs and expenses.
- Contracts 2 and 6 stated that the DMF is a contribution payable in arrears for all operating expenses for the care, upkeep, maintenance and management of the park.
- Contracts 8 and 10 stated that the DMF is a contribution towards the costs of developing, managing and improving the park.
- Contract 12 stated that the DMF helps cover the future capital costs of replacing and upgrading park infrastructure and park facilities, and that DMF money is reinvested into resort in areas such as new facilities and equipment, upgrading facilities and beautification of the park over a long period of time, ensuring that the resident's home value continues to grow.

Resident restrictions and responsibilities

As explained in section 2 above, the site agreements analysed for this report contained a vast array of rules and restrictions that apply to residents - from timeframes for singing and using power tools to restrictions on wearing t-shirts in the pool. It appeared that some of these rules had the potential to be applied unfairly, and were not reasonably necessary to protect the operator or to ensure the enjoyment and safety of the park for other residents and visitors. The day-to-day obligations imposed on residents often seemed to outweigh the obligations imposed on operators under the site agreements, despite the significant fees paid by residents for the right to occupy the sites and use the common areas and facilities.

Several of the site agreements provided contain clauses that are now prohibited terms under the Act and the Regulations. For example, terms requiring residents to take out insurance. Whilst these terms are void and unenforceable, it is left to residents to understand the legislation and to determine whether their obligations set out in the site agreements remain applicable. It is likely that many residents would be reluctant to seek formal legal representation to dispute a term with an operator.

Nature of tenure

Several site agreements contain termination clauses that are no longer enforceable due to the operation of section 207 of the Act. For example, clauses permitting termination if site fees remain unpaid for 14 days.

Whilst reforms have arguably improved the security of tenure for residents, some residents (and potential residents) might still not fully understand the nature of the arrangement they are buying into. The site agreements reviewed were referred to as site agreements, leases,

license agreements, residential site agreements, Part 4A agreements and residency licence agreements. Dwellings were likewise referred to using a range of terms, such as home, Part 4A dwelling, park home or moveable dwelling. Residents were referred to as tenants, occupants, site tenants and other terms.

The lack of consistency in terminology, and description of the rights and responsibilities of the parties, only adds to the complexity of the arrangements from the purchaser's perspective. The legal arrangements between operators and residents are relatively unique, and is unlikely something that residents would have encountered prior to moving into a park. It is not therefore surprising that some residents might believe they are purchasing a home in the usual sense, or even renting Significant benefits could be gained from using consistent terminology.

4. Law reform

Most of the site agreements provided were dated prior to commencement of recent reforms relating to unfair contract terms. As part of those reforms, civil penalties apply for contraventions of the prohibition on unfair contract terms in respect of certain standard form contracts entered into from 10 November 2023 onwards.[19] As such, it is difficult to assess the impact (if any) those reforms have had on the content of site agreements and relevant annexures.

Residents who entered into contracts following the commencement of the original unfair contract terms laws in 2010 could technically seek to have the relevant term declared void by VCAT or a court. However, civil penalties would not apply for contraventions unless the site agreement was entered into on or after 10 November 2023.

A term of a consumer contract is void is the term is unfair, and the contract is a standard form contract.[20] On the face of it, most site agreements would fall within the definition of a standard form contract. However, a term will only be 'unfair' if:

- it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
- it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
- it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

[19] *Competition and Consumer Act 2010* (Cth) section 224 and Schedule 2 Part 2-3.
[20] *Competition and Consumer Act 2010* (Cth) Schedule 2 Part 2-3.

In determining whether a term of a contract is unfair, a court may take into account such matters as it thinks relevant, but must take into account the extent to which the term is transparent and the contract as a whole. The *Competition and Consumer Act 2010* provides a non-exhaustive list of examples of unfair terms, for example, a term that permits one party to unilaterally vary the terms of a contract.

As noted above, this analysis has not sought to provide a view about whether the terms in the site agreements are likely to constitute unfair contract terms. In any case, there are several reasons why unfair contract term laws alone are unlikely to solve the issues raised in this report:

- A term will only be unfair if it is not reasonably necessary in order to protect the legitimate interests of the operator seeking to rely on the term. The legitimate interests of the operator would need to be considered on a case-by-case basis. Likewise, the extent to which the term is transparent and the context of the contract as a whole will vary depending on the circumstances. As such, just because a term is unfair in one site agreement, does not necessarily mean that it would be considered unfair in another.[21]
- Establishing that a term is 'unfair' would require the resident to apply to VCAT or a court. Barriers to residents accessing justice via this avenue are well documented.[22] Alternatively, a regulator would need to commence regulatory action, which is not always possible due to the limited resources available for such actions.
- Many of the terms set out above are unlikely to meet the legal test of 'unfair', but nevertheless could lead to unfair or unfavourable outcomes for residents.
- Issues around consistency of terminology, complexity and transparency also will not be solved by unfair contract terms laws. Whilst the context of the entire agreement and transparency are considered by the court, it does not necessarily follow that site agreements overall will become more transparent and user-friendly.
- Civil penalties for unfair contract terms laws only apply to agreements entered into or renewed from 10 November 2023 onwards. This limits the ability of regulators to take action to protect the interests of existing residents.

Furthermore, whilst there were significant reforms to residential park regulation in 2018 under the Amendment Act, operators still have significant flexibility in terms of the contractual

[21] As noted by the ACCC, 'Some terms that might seem quite unfair in one context may not be unfair in another. Conversely, if a particular term was decided by a court in one case to be fair, this does not mean it will always be fair' - https://consumer.gov.au/sites/consumer/files/2016/05/0553FT_ACL-guides_ContractTerms_web.pdf.

[22] For example, see Consumer Action Law Centre, 'Submission to Parliamentary Inquiry into the Retirement Housing Sector', 30 June 2016, pages 13-21: Parliamentary Inquiry into the Retirement Housing Sector - Consumer Action Law Centre.

arrangements entered into with residents. The 2018 reforms do not appear to have solved several of the key issues facing residents (and potential residents) detailed above.

A standard form site agreement would help to address many of the issues outlined in this report. The standard form site agreement in force in New South Wales was described by the Tenants' Union of NSW as 'essential'.[23] The Tenant's Union of NSW went on to say that:

> *"Without such we have no doubt the range of site agreements provided to home owners would expand and we would see an increase in site agreements with standard terms omitted, or with non-compliant terms."*[24]

South Australia[25] and Western Australia[26] have also introduced standard form site agreements. Recommendations for what a standard form site agreement should include and exclude are provided below, having regard to the existing regimes in New South Wales, South Australia and Western Australia.

[23] *Residential (Land Lease) Communities Regulation 2015* Schedule 1 and *Residential (Land Lease) Communities Act 2013.*
[24] https://files.tenants.org.au/policy/2021-TU-RLLCAct-Submission.pdf.
[25] https://www.cbs.sa.gov.au/documents/tenancy/forms/Site-Agreement-Form-fixed.pdf.
[26] https://www.commerce.wa.gov.au/sites/default/files/atoms/files/standard-site-only-agreement.pdf.

5. Standard form contract terms

If the Victorian Government proceeds to introduce a standard form contract for Part 4A residential parks, the standard form contract should include the matters set out below.[27] These sections in the standard form agreement could be tailored to reflect the arrangement between the parties, but should at all times be consistent with the law and be drafted in a clear, concise and effective manner:

- Details of the parties
- Address of the residential community and site
- Term of the agreement, including commencement and ending dates
- Site fees, including payment frequency, start date and payment methods
- Description of site fee increase calculations
    - Fixed – with reference to a particular dollar amount, percentage, or CPI increase
    - Non fixed –review dates or frequency, and plain language description of limitations on non-fixed rent increase, and how resident can dispute increase
- Services and facilities such as electricity, gas, water, phone, internet, gardening, caravan parking, post box, garbage collection and other services
    - Whether these services are provided by park operator, must be arranged separately with a third party or are not available
    - The fee payable for the service (if any)
- Security bond amount
- Description of all other fees payable, including:
    - DMF
    - Share of capital gain or losses
    - Administration fee
    - Selling commission
- Keeping of pets
- Shared facilities and services provided at the park (multi-choice), with a note that rent must be reduced if services are reduced pursuant to section 206ZB of the Act
- Whether the park operator has the right to relocate the home
- Sale process, including any limitations relating to sale process (e.g. for sale signs)

Standard terms could then follow, which cannot be tailored. These could address matters such as:

[27] It is beyond the scope of this report to recommend specific reforms in respect of fees and charges (e.g. on-fixed rent increase or DMF calculations). However, to the extent that reforms are introduced to address issues with fees and charges, these restrictions should be incorporated into the standard form contract.

- Description of tenure (i.e. right to occupy residential site)
- Resident's duties, particularly in relation to cleanliness, maintenance and repairs
- Permitted use of dwelling, site and common areas
- Alterations, additions or modifications to dwelling by resident
- Operator's right of entry
- Payment of site fees
- Arrangements in respect of utilities (e.g. where separately metered)
- Operator's duties, including in relation to access to park, maintenance, cleanliness, safety, repairs, and provision of services and facilities
- Process for urgent repairs
- Sales process and limitations (e.g. in relation to 'for sale' signs)
- Resident's rights, including right to quiet enjoyment
- Amendment of the park rules, and agreement to comply with park rules
- Notices
- Liability for GST
- Determining market value of site (if relevant), including liability for valuer costs
- Sub-letting and assignment
- Right to vacant possession
- Resident's responsibility for damage (including by visitors)
- Sale or closure of park, or termination of head lease
- Dispute resolution, including liability for mediator costs
- Termination
- Standard definitions (e.g. common area)

Additional terms could be inserted below the standard terms, but only if they:

- do not contravene the Act or regulations or any other law;
- are not inconsistent with the standard terms contained above; and
- are drafted in a clear, concise and effective manner.

This analysis has also considered the matters that a standard form contract should explicitly exclude. It is likely that, as part of the planned reforms to residential parks, the Victorian Government will consider prescribing further 'prohibited terms', in addition to those already contained in the Act and the Regulations. These prohibited terms would, of course, need to be explicitly excluded from any standard form contract. New prohibited terms could relate to:

- certain fees and charges (e.g. banning DMFs or banning DMFs calculated in particular ways);
- unfair warranties (e.g. that the site is not suitable for use as a site for a relocatable dwelling);
- requiring the operator's consent before a resident complies with a requirement under law;

- requiring a resident to provide building, fire or pest inspection certificates unless required by law;
- GST clawbacks;
- payment of ongoing fees after vacating a dwelling (e.g. following death of the resident);
- relocation and replacement of dwelling (e.g. prohibition on terms requiring resident to bear all costs of relocation, or to replace a dwelling within a certain period);
- replacing driveways, fences or other significant fixtures;
- 'right of first refusal' during sales process; or
- restrictions on lodging caveats, or requiring residents to charge their rights, title and interests in the dwelling in favour of the operator as security for payment of fees and charges.

Park rules can often contain some of the most restrictive rules for residents' day-to-day lives in a park. Currently, operators have broad discretion as to the content of these rules. Whilst residents can challenge a particular rule as 'unreasonable' by applying to VCAT, this ultimately puts the onus on residents to a challenge a rule – rather than putting the onus on the operator to ensure the rule is reasonable from the outset. As a starting point, we suggest that section 206ZY of the Act be amended to stipulate that an operator must not make a Part 4A park rule that is unreasonable. Section 206ZZA already sets out several factors that must be considered when determining whether a rule is unreasonable.

Annexure 1 – Contracts reviewed

Contract number	Location	Year
Contract 1	Regional	2023
Contract 2	Inner Metropolitan	2003[28]
Contract 3	Outer Metropolitan	2008
Contract 4	Regional	2011
Contract 5	Inner Metropolitan (same location as Contract 2)	2013
Contract 6	Regional	2013
Contract 7	Regional	2013
Contract 8	Outer Metropolitan	2015
Contract 9	Regional	2017
Contract 10	Regional	2022
Contract 11	Regional	2023[29]
Contract 12	Outer Metropolitan (same location as Contract 3)	2024[30]

[28] This contract was undated. The analysis has relied on instructions from CPRC about the date of the contract.
[29] Ibid.
[30] Ibid.

Annexure 2 – Summary of fees charged

	Contract number											
	1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
Sales administration fee												
Deferred management fee												
Site fee/rent												
Utilities												
Rates, charges and taxes												
Selling commission (if operator acts as agent for sale)												
50% of independent valuer costs (market value disputes)												
Contribution to insurance premiums												
Garbage collection and removal												
Post box fee												
Gas bottle												
Caravan storage												
50% of mediation costs (in event of dispute)												
Other												

Notes:

The above table is only a summary of the fees charged. The application and quantum of fees charged under these categories varied between site agreements. Fees and charges have not been listed that would now be prohibited terms under the Act (such as an initial fee for the supply of a key or access card) or terms relating to liability for payment of GST.[31]

Miscellaneous fees have been combined into the 'Other' category. Examples of these fees include:

- other amounts advanced to or for the benefit of the resident by the operator;[32]
- additional charge for visitors who stay more than 14 days;[33]
- connection of telephone service;[34] and
- reasonable costs incurred by the operator relating to a proposed assignment or sub-licence.[35]

Contracts 2 and 5 have been highlighted in blue, and contracts 3 and 12 in yellow. As noted in Annexure 1, contracts 2 and 5 are from the same park, and contracts 3 and 12 are from the same park (albeit with different operators). This allows easier comparison of the different fees that residents in the same location may be being charged. This analysis does not have information about whether residents who signed earlier versions of a site agreement may have resigned newer site agreements during their tenure.

[31] Section 206ZD of the Act.
[32] Contracts 2, 5 and 6.
[33] Contract 3.
[34] Contract 3.
[35] Contract 4.

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