



## Council of Social Service of New South Wales

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27 February 2012

Residential Parks Review  
Fair Trading Policy  
PO Box 972  
PARRAMATTA NSW 2124  
[policy@services.nsw.gov.au](mailto:policy@services.nsw.gov.au)

Dear Sir or Madam

### **Re: Improving the governance of residential parks**

NCOSS welcomes this opportunity to respond to the discussion paper *Improving the governance of residential parks*, released by the Minister on 3 November 2011.

Access to secure, appropriate and affordable housing is a fundamental human need. We acknowledge that residential parks are important part of the housing options available to low to moderate income households. Because of this there is a strong public interest in regulating their physical environment, clarifying the rights and obligations of residents, and dealing with the negative consequences of park closures.

NCOSS welcomes the passage last year of legislation to establish a register of residential parks in NSW. This move will make it easier for consumers to establish where parks are located and who is running them, as well as improving the ability of policy makers to monitor trends in the number and regional distribution of parks over time.

The discussion paper identifies a raft of issues that have been raised with Fair Trading in recent years. Out of these NCOSS has chosen to respond to a small number of key matters.

#### Licensing of park operators

Since permanent living in residential parks was made lawful in 1986, local government has been responsible for the regulation of non-tenancy matters. Tenancy matters are governed by the *Residential Parks Act 1998*.

The *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* details separate requirements for each of the specified forms of housing (manufactured home estates, caravan parks etc). Matters

generally covered in the Regulation include land and dwelling site requirements, setbacks, roads, utility services, and, in the case of caravan parks, shower, toilet and laundry facilities. Operators are required to maintain a register of occupiers and give them specified written information.

As is acknowledged in the discussion paper, the recently introducing registration system is not designed to address quality, standards or like matters. It is designed instead to better identify what is out there and who the operators are.

Prior to the election, the current NSW Government undertook to introduce a licensing system for residential parks. The discussion paper canvasses options for doing so. In our view the key question is what level of government is best placed to perform this licensing and enforcement function.

On balance we suggest that local government is best placed to do this. The Approval to Operate that they currently issue to park operators under the Regulation is effectively a form of licensing. Renewal is required every 5 years. The provisions of the Regulation could be reviewed to ensure that its requirements are up to date and sufficient. Any such review should also consider resource implications for councils of any additional requirements.

NCOSS is not convinced that it would be beneficial to transfer the licensing function to NSW Fair Trading. The agency does not have the resources or expertise to monitor compliance with health and building regulations or to readily visit parks spread across the state. There would appear to be merit, however, in prohibiting persons from operating a residential park if they have a recent conviction for physical violence or fraud or dishonesty, as applies to retirement villages. As residential parks do not hold capital in trust for residents, the fact that an operator was previously declared bankrupt or insolvent seems of less concern.

#### Education of park operators

NCOSS believes it would be beneficial to encourage the industry to expand the provision of education programs for park operators and other key staff. Given that considerable numbers of older people and vulnerable people live in residential parks, these programs should include training such as mental health first aid, services available to older people etc.

It would not appear necessary to introduce mandatory education requirements for park owners, operators, managers and office staff. We believe the quality of park services can best be addressed through the formal licensing system referred to above.

#### Rent increases

In 2005 the *Residential Parks Act 1998* was amended to restrict appeals to the Consumer Trader & Tenancy Tribunal (CTTT) regarding rent increases to cases

where the increase exceeded the CPI. Despite this change the number of rent increase appeals has been growing, exceeding 2000 cases in 2010.

The mere fact that there is a high volume of appeals does not mean the earlier reforms were a failure. As the discussion paper notes, a sample review of 60 post-2005 decisions by the Tribunal revealed that it ordered a smaller increase than that sought by the park operator in 65% of cases, and refused to allow any increase at all in a further 13% of case. From a tenant protection viewpoint, this suggests the system is working reasonably satisfactorily.

The possible exception relates to the onus of proof. Generally the legal system requires the appellant to prove that something is excessive or inappropriate. Whilst the discussion paper suggests that reversing the onus of proof "*undermines long standing legal principles*" (p.11), the reality is that appellants will generally not have access to factual information about the finances of the park in which they live. Pragmatically the best way to proceed when someone appeals a rent increase above the CPI would be for the Tribunal to ask the operator to demonstrate why such an increase is necessary.

NCOSS is not attracted to the other changes canvassed in this part of the discussion paper.

#### Other matters

There are several other suggestions in the discussion paper that appear to have merit, including the development of a set of model park rules (p.17), the introduction of longer initial lease periods (p.21), amending the law to say residents have the right to sell their dwellings onsite without interference by the park operator (p. 19), the introduction of a single Residential and Holiday Parks Act (p.23) and streamlining the excessive amount of written material that an operator is required to give an incoming resident (p.14).

If action is to proceed on these matters, there should be detailed consultation with relevant stakeholder and advocacy groups.

The discussion paper makes reference to issues arising from the use of residential parks for crisis accommodation purposes. It appears that this discussion intertwines two separate matters. The first involves Housing NSW's Temporary Accommodation (TA) program, where they meet the cost of emergency accommodation for particularly vulnerable households. These placements would generally be for no more than 14 days. The second category involves referrals from NGOs, either when the person is leaving a crisis service, generally for semi-permanent accommodation, or because crisis accommodation for families with children is particularly scarce, and residential park may be the only available option.

It is accepted that some low income households require the assistance of support services to sustain their tenancies. This is not a problem confined to residential parks, or to residents referred by particular agencies.

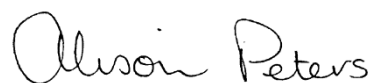
Addressing the complex problems involved requires expanding the availability of case-managed support services, the development of better affordable housing options for those individuals or households whose needs cannot be satisfactorily met in a residential park environment, and the opening of additional crisis accommodation services for families with children in particular locations.

### Conclusion

NCOSS considers that the discussion paper raises a number of important matters that could improve the circumstances of people living in residential parks. We note that options for reform are largely outlined in very general terms. We suggest that there should be more detailed consultation with stakeholder groups on those matters that are identified for subsequent legislative or other action.

If you require any further information, please do not hesitate to contact Mr Warren Gardiner, Senior Policy Officer, on 02 9211 2599 ext 112 or [warren@ncoss.org.au](mailto:warren@ncoss.org.au)

Yours faithfully

A handwritten signature in black ink that reads "Alison Peters". The signature is written in a cursive, flowing style.

Alison Peters