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Answers to questions from WA Legislation Standing Committee. 1 March, 2019

Foreword in explanation:
PHOAWA began in 1998 in older style residential caravan parks where there were minimal legal or financial safeguards for homeowners. Many parks were run by owners with varying degrees of competency and flexible ideas of ethical management. Many homeowner protections came in the 2006 RP(Ls)T Act and we appreciate this. However, we believe homeowners *remain* unfairly vulnerable.

The industry has changed. PHOAWA now represents residents in 37 parks/villages in WA, which fall into roughly three groups, with many problems in common and some unique:-
- individual or family-owned mixed-use caravan parks (40% of our members)
- mixed-use caravan parks run by big corporations such as DHP. (40%)
- the variously named leisure/lifestyle villages (20%)

Residents in individual or family-owned parks are particularly vulnerable. We have less complaints from caravan parks run by corporations. And we have a growing number of complaints from leisure/ lifestyle parks and villages.

We reiterate that making as many of Bill 99's clauses as possible retrospective would solve a lot of homeowners' issues. **We were told this is not possible but we query this.** Operators can alter their leases to accommodate their business plans. Leases are not sacrosanct and *can* be changed to conform with changes in the Act.

Example: Operators in Burns Beach Caravsan Park and Fremantle Village Caravan Park were able to alter their leases in the process of installing water meters post-2007.

If operators can alter leases then residents should also be able to benefit from new legislated conditions. Having new leases that comply with the Act and old leases that don't problematically creates two classes of homeowners. As outlined in our **Answer 1.2** below, the Bill sets up just such a situation to go on indefinitely.

Your Q. 1.1:
Summary of our views on the changes made to the regulation of the relationship between the operators of residential parks and long-stay tenants.

Answer to 1.1: Residents **in future** should have a more balanced, less combative relationship with park operators if Bill 99 remains largely as it is and is not further altered in favour of park operators. But as the Bill stands, nothing will change for current leaseholders.

Eg: At Serpentine caravan park, leases have a clause allowing 6% pa rent increase which when inserted was reasonable. It is no longer reasonable. Asked to justify why the increase was applied in 2018, the operator's alleged response was "because we can." This is an all-too-common response - particularly from individual or family Park Operators. The Bill will do nothing to 'regulate this relationship'.

And no regulation can change such attitudes without further incentives for park owners and better monitoring of park owner behaviours.

Your Q 1.2:
Overview of the different lengths of agreements to which the current Act applies.

Answer to 1.2:

The problem is as much the *type of agreement* as the length. And the Bill does not fix this.

The 2011 Consensus cited 28,466 living in residential parks in WA, in 15,400 dwellings. Most would then have been in mixed-use Caravan Parks and on periodic (180 day rollover) leases, which they are probably still on.

('Lifestyle parks' have since increased the numbers but lease-length is not such a vexed issue there. Eg, NLV offer 60 year leases.)

43% of mixed-use parks give *only* periodic leases (180 days).
38% of residents in mixed-use parks are on periodic leases. (DRIS pg 15).
56% of these parks offer *only* periodic leases, or fixed term 12 month leases.

Operators prefer the "no liability" angle and the flexibility of periodic leases. Residents are not given a choice. Periodic and current Fixed-Term Leases offer no protection or compensation for homeowners.

The Bill says a fixed term agreement can 'no longer be terminated' early without a tenant's agreement if an operator sells out. (Bill s41 EN pg 21). But this *does not apply* to periodic leases (Bill s41 EN pg 21) and *does not apply* where sale takes place before commencement. *And does not apply* for pre-commencement agreements (Bill s110 EN pg 40).

It is almost whimsical that Bill 99 "no longer recognises" periodic leases. **We believe that *thousands will remain on periodic leases indefinitely unless Operators <u>have</u> to change.***

Your Q 1.3:

Suggested amendments to the Bill that would address our most pressing concerns.

Answer 1.3:

1.3.1 RENT

- WE WOULD LIKE Homeowners to have the right to apply to SAT for relief of unfair rent rises just as Park Owners can apply to SAT to legitimise unusual rent rises. (s63A)

Park Operators in mixed-use parks at times seem to charge what they can get away with. In suburbs renters can move to a cheaper area. In the case of caravan park homes this is not physically or financially possible even IF a new site can be found.

The RIS recommendation 14.2 pg 267 says that in keeping with RTA, rent by market review should cease *but the Bill takes no notice of this recommendation* (Bill s106 EN.) The Bill allows it to continue if it is a pre-existing condition. (s106 pg40). The process for undertaking a rent review before Commencement is to continue to apply *afterwards* (Bill s107 EN pg40).

Leasing land based to CPI is common business practice. Aspen Parks had leases on some eastern states parks @ CPI +0%-+3% and their Perth CEO told residents negotiating Woodman Point's rent that it was the way they did business. If industry can apply to SAT for unusual rent rises then homeowners must be given the same facility.

Comment: In recent years, residents at DHP Koombana Bay, Bunbury, successfully negotiated a change to rent review protocols without any change in other conditions.

1.3.2 HOME SALES

- WE BELIEVE ALL homeowners SHOULD HAVE THE RIGHT TO SELL THEIR OWN HOME. We would like the Bill amended to make this retrospective if at all possible.

This is a major issue in leisure/lifestyle villages.

We believe it is ***inherently unfair*** for the park operator to be able to control sale while continuing to collect rent until the sale takes place. (This applies mostly in leisure/lifestyle villages).

The Bill says the right of a tenant to sell their home cannot be excluded from a contract (Bill s55 EN pg27). This is in accordance with DRIS recommendations 17.1 & 17.6 (pg 270). But this is *meaningless for current residents* since a transitional provision provides that an agreement prohibiting such a method of sale already in an agreement prior to commencement *continues to have effect*. (Bill s113 & s114 EN pg 41).

Some village residents or relatives of deceased residents pay rent for months or years on a home which park management does little to sell. Some managers are instructed to sell new homes first and therefore do even less to market older ones. Unfortunately residents agreed to that as part of their lease but we believe that for park owners to insist on their selling rights in this situation is unconscionable. The park operator already has control over choice of incoming residents.

The price of a home is subject to market forces and an outgoing homeowner has to balance that against the cost of continuing rent. IF a homeowner were able to make their own home sale at a price decided by themselves, it would **surely benefit Park Owners even if the homeowner lost money**, bearing in mind the business case weakness in having empty houses in a village.

1.3.3
STANDARD TERMS (s 10A)

We would like
- The Park Operators to USE THE PRESCRIBED STANDARD FORM OF AGREEMENT
- Clear parameters on which changes *are* allowed to standard forms, even if they are agreed by SAT and permitted by Minister.

We believe this level of 'plasticity' on Standard Terms negates any protection this clause may be intended to give homeowners. The consistent use of Standard Forms would prevent too many

"amended leases" which might not suit homeowners but in which homeowners have no say. It would also prevent the following example from recurring:-

Example: In one caravan park, the owner had instructed managers (uneducated about legal documents) to take from Leases some clauses about management responsibility for repairs or maintenance. One resident asked management to repair roof damage caused by a careless staff driver in the rubbish truck. She was told, "The owner told us to change that bit in the lease. We can't help you, so take it or leave it." When the resident took the lease for legal appraisal she was told, "This Lease is a joke – it's so full of alterations and mistakes that it could hardly be called a legal document."

Comment: Given the poor training and business ethic of some managers, we feel any level of "accepted variation" in Leases could be misused, intentionally or unintentionally.

1.3.4 APPLYING to SAT for Compensation

We would like

- Every homeowner, regardless of tenancy type or length, to have the right to apply to SAT for compensation when they are forced to leave a park or move within a park.

Many park homeowners, having responsibly decided to buy and maintain their own home, have spent considerable sums.

Even in Caravan Parks, homes cost from $20k-$270k (DRIS Pg 16) & relocation costs in 2012 were said to be $14k. (DRIS Pg 102) We have many examples that relocation costs can go as high as $40K - *IF* there is somewhere to go.

These facts negate CIAWA's claim that homeowners "have had plenty of time" to organise a move. So for those on periodic leases, or on any pre-commencement leases, there is a high risk of a loss of life savings and subsequent pressure on government housing if a lease is summarily terminated and homeowners lose everything.

And the Bill *still* leaves the onus on homeowners to apply to SAT for recognition as long-term residents, which we believe is unfair.

1.3.5
We would like (if not dealt with any other way) -

- An amendment addressing the CONTINUED USE BY PARK OWNERS OF "PERIODIC LEASES" and the subsequent ongoing vulnerability, for an indefinite period, of permanent homeowners on old leases.

We note that CIAWA professes concern about finding the right leases for itinerant or short-term renters in caravan parks. We feel there are adequate provisions already made for this group. As they are not homeowners we do not feel we can state a view on this.

Just for the RECORD:

The following may currently be out of scope but is *still much needed*:

1.3.6 MANAGEMENT STANDARDS

We would like amendments to ensure that

a) Park Owners need a licence to operate a park
b) Park Managers need a licence or a qualification to manage a park

The stories of management incompetence and the abuse of residents, mostly but not only from caravan parks, prompt the above request. Parks can be bought by anyone and run by anyone. This has left the way open for failed businessmen to take parks on simply as a tax deduction for example, and for managers with low numeracy and literacy skills and no management training to be employed in some parks.

Your Q. 1.4

Summary of our views on CIAWA's suggested changes to Bill.

Answer 1.4

PHOA WA acknowledges that park operators have a business to run and, with the exceptions noted overleaf, we are supportive of suggestions made if they enable an improved business environment.

We see the following Amendments proposed by CIAWA as reasonable and acceptable:-

Section 71A – Orders to terminate agreement for repeated interference with quiet enjoyment
Section 20A – Park operator's continuing disclosure obligations about material changes
Section 21 – Security bonds
Section 32H(4) – Locks and security
Section 32N - Levies, rates, taxes and charges to be paid by park operator
Section 8(2) – reinstatement - Retirement Villages Act 1992 does not apply to a lifestyle village for retirees.
Section 62D - Orders in relation to park operator's representations
Section 63C – Recognising persons as long-stay tenants

We query/dispute the following CIAWA proposals:-

Section 42 **-** Termination by park operator without grounds

We DO NOT WANT THIS REINSTATED.

The ability of operators to exercise 'without grounds' termination under the current Act is ***of great concern to our members*** **and we welcome its removal** under the proposed Bill.

We strongly refute CIAWA's suggestion that periodic leases are one-way in favour of the tenant, and as for long-stay tenants having the ability to 'terminate without grounds', such a tenant is still liable for rent until a new tenant assumes that role.

In any event the operators' argument for reinstatement of this section is at odds with Section 10C. The operator could, with the appropriate notice, terminate all leases immediately prior to a park changing hands, leaving both tenants and the successor tenant in limbo.

Section 57B – Park operator not required to be licensed to act as selling agent.

PHOAWA believes the right of an INDIVIDUAL TO SELL THEIR OWN HOME should be enshrined in law. So we hope this section will become irrelevant. ***However -***

IF park owners insist on their right to sell homes, PHOA WA believes they should be licensed. Incompetency, ignorance, mistakes and lack of motivation from operators or employees selling homes has already cost village homeowners thousands of dollars.

Section 10A – Prescribed standard-form agreement

PHOA WA ADVOCATES STANDARD-FORM AGREEMENTS where possible and does not want this requirement weakened any further in the legislation.

However, as long as the following clause (s 62 quote below) remains, along with the need for Ministerial and SAT approval of changes, **we can accept** the CIAWA proposal.

Clause to remain: "*Under section 62, a long-stay tenant may apply to the State Administrative Tribunal for particular orders in relation to a long-stay agreement that is not in any standard form*".

Section 10B(4) – Particular terms in long-stay agreements

We DO NOT WANT section 10B (4) deleted. Regulation is part of the parliamentary process and both sides win and lose through it.

We would ACCEPT the alternative amendment suggested by CIAWA as follows:
(4) The regulations may prescribe non-standard terms which park operators are prohibited from including ~~a term as a term that must be included~~ in a long-stay agreement.

Section 10C - Long stay agreements bind park operators' successors in title

We do not understand operators' reasoning here. Tenants are bound by their leases and the suggestion that a changeover could result in ambit claims by tenants is nonsense. By exercising due diligence any successor would know exactly what the terms of current leases are.
However, we have no objection to this wording.

Section 12(1)(e) – Restrictions on amounts park operators may charge

We do not see the need for this. We feel the Bill in its present form **provides adequate cover** for all parties.

We query the inclusion of the words "reasonable profit" as it opens up a large area of disputation on what is reasonable and what is the operator's reasoning and financial modelling. Operators would have trouble providing proof of reasoning.