WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

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RESIDENTIAL PARKS (LONG-STAY TENANTS) AMENDMENT BILL 2018 [99-1]

When in committee on the *Residential Parks (Long-stay Tenants) Amendment Bill 2018*:

Clause 4

Minister for Regional Development representing the Minister for Commerce: To move –

6/4 Page 5, after line 10 — To insert:

> ***DVO*** has the meaning given under the *Domestic Violence Orders (National Recognition) Act 2017* section 4(1);

Minister for Regional Development representing the Minister for Commerce: To move –

7/4 Page 5, after line 13 — To insert:

> ***Family Court injunction*** means an injunction under the *Family Court Act 1997* section 235 or 235A or the *Family Law Act 1975* (Commonwealth) section 68B or 114;
>
> ***family violence*** has the meaning given in the *Restraining Orders Act 1997* section 5A(1);

Minister for Regional Development representing the Minister for Commerce: To move –

8/4 Page 5, line 25 — To delete "agreement" and insert:

agreement, or an interest in the agreement,

Minister for Regional Development representing the Minister for Commerce: To move –

18/4 Page 7, lines 1 to 14 — To delete the lines and insert:

> ***residential park*** has the meaning given in section 5AA;

Clause 5

Minister for Regional Development representing the Minister for Commerce: To move –

20/5 Page 10, after line 20 — To insert:

> (3A) An agreement or class of agreement cannot be prescribed under subsection (2)(d) unless the Minister is satisfied that —
>
> (a) the agreement or class of agreement to be prescribed is sufficiently regulated by another Act; or
>
> (b) the accommodation provided under the agreement is not accommodation that should be regulated by the Act.

Minister for Regional Development representing the Minister for Commerce: To move –

19/5 Page 10, after line 29 — To insert:

> **5AA. Residential parks**
>
> (1) In this Act, a ***residential park*** —
>
> (a) is a place, including a caravan park, where there are —
>
> (i) sites on which relocatable homes may be parked, assembled or erected in accordance with a tenancy; and
>
> (ii) shared premises for the use of long-stay tenants in accordance with a tenancy;
>
> but
>
> (b) is not the following places —
>
> (i) a place established as a retirement village under the *Retirement Villages Act 1992*;
>
> (ii) a prescribed place or class of place.
>
> (2) However, a place or class of place cannot be prescribed under subsection (1)(b)(ii) unless the Minister is satisfied that —
>
> (a) the place or class of place to be prescribed is sufficiently regulated by another Act; or
>
> (b) it is not appropriate for the Act to regulate the accommodation provided by the place or class of place.

Clause 10

Committee Recommendation:

2/10 Page 12, lines 10 to 19 — To oppose the clause.

Minister for Regional Development representing the Minister for Commerce: To move –

21/10 Page 12, line 14 — To delete "The" and insert:

(1) The

Minister for Regional Development representing the Minister for Commerce: To move –

22/10 Page 12, after line 19 — To insert:

(2) However, regulations cannot be made under subsection (1) unless the Commissioner has consulted with, and invited submissions from, persons the Commissioner considers has an interest in —

(a) for regulations made in relation to a long-stay agreement or class of long-stay agreement — the agreement or class of agreement to be prescribed; or

(b) for regulations made in relation to a residential park or class of residential park — the residential park or class of residential park to be prescribed.

Clause 19

Committee Recommendation:

3/19 Page 24, line 26 — To insert after "that":

is reasonably likely to occur and

Clause 29

Minister for Regional Development representing the Minister for Commerce: To move –

9/29 Page 38, after line 27 — To insert:

(4) When a charge of an offence under subsection (2) relates to a failure by the park operator to give the long-stay tenant a copy of a key to the premises, it is a defence to the charge to prove that —

(a) the copy of the key had been given to the park operator under section 32H(9)(b); and

(b) the tenant was a person to whom the park operator was instructed not to give the copy of the key under section 32H(9)(c)(ii).

Minister for Regional Development representing the Minister for Commerce: To move –

10/29 Page 40, after line 26 — To insert:

(h) for the purpose of inspecting the agreed premises and assessing any damage after the termination of a tenant's interest under —

(i) section 33(2A) or (2B); or

(ii) section 74B.

(4) It is a term of every long-stay agreement that the park operator may enter the agreed premises under subsection (3)(h)(i) —

(a) not more than 7 days after receiving notice of termination under section 45A(1) or 45B(4); and

(b) not less than 3 days after giving notice to the long-stay tenant of the park operator's intention to enter the agreed premises.

(5) It is a term of every long-stay agreement that the park operator may enter the agreed premises under subsection (3)(h)(ii) —

(a) not more than 10 days before the hearing of the application under section 74B; and

(b) not less than 3 days after giving notice to each long-stay tenant of the park operator's intention to enter the agreed premises.

Minister for Regional Development representing the Minister for Commerce: To move –

11/29 Page 42, line 14 — To delete "It" and insert:

Except as provided in subsection (9), it

Minister for Regional Development representing the Minister for Commerce: To move –

23/29 Page 43, after line 6 — To insert:

(6A) A park operator who alters, removes or adds a lock or similar device to the shared premises other than in accordance with subsection (4) —

(a) does not breach the term referred to in subsection (4) if the park operator alters, removes or adds the lock or device for the health and safety of persons who may use the shared premises; and

(b) does not commit an offence under subsection (6) related to a breach of the term referred to in subsection (4) if the park operator alters, removes or adds the lock or device for the health and safety of persons who may use the shared premises.

Minister for Regional Development representing the Minister for Commerce: To move –

12/29 Page 43, after line 24 — To insert:

(9) It is a term of every on-site home agreement —

(a) that a long-stay tenant may alter or add any lock or similar device to the agreed premises —

(i) after the termination of an excluded tenant's interest in a long-stay agreement under section 74B; or

(ii) in any event, if it is necessary to prevent the commission of family violence that the tenant suspects, on reasonable grounds, is likely to be committed against the tenant or a dependant of the tenant;

and

(b) that the tenant must give to the park operator a copy of the key to any lock or similar device altered or added under paragraph (a) as soon as practicable, and in any event within 7 days, after the lock or similar device has been altered or added; and

(c) that the park operator must not give a copy of a key referred to in paragraph (b) —

(i) to an excluded tenant whose interest in the long-stay agreement has been terminated under section 74B; or

(ii) in any event, to a person who the tenant has instructed the park operator in writing not to give the copy of the key.

(10) A long-stay tenant who breaches a term referred to in subsection (9)(b) without reasonable excuse, in addition to any civil liability that the tenant might incur, commits an offence.

Penalty for this subsection: a fine of $5 000.

(11) Subsection (9)(b) does not apply if the park operator is a person reasonably suspected of being likely to commit the family violence referred to in subsection (9)(a)(ii).

(12) A park operator who breaches a term referred to in subsection (9)(c) without reasonable excuse, in addition to any civil liability that the park operator might incur, commits an offence.

Penalty for this subsection: a fine of $20 000.

Minister for Regional Development representing the Minister for Commerce: To move –

13/29 Page 43, line 26 — To delete "A" and insert:

Except as provided in subsection (5), a

Minister for Regional Development representing the Minister for Commerce: To move –

24/29 Page 43, line 26 — To delete "A" and insert:

Subject to subsection (1A), a

Minister for Regional Development representing the Minister for Commerce: To move –

30/29 Page 43, line 26 — To delete "A" and insert:

Subject to subsection (1A) and except as provided in subsection (5), a

Minister for Regional Development representing the Minister for Commerce: To move –

25/29 Page 44, after line 3 — To insert:

(1A) It is a term of an on-site home agreement that —

(a) a long-stay tenant may affix either or both of the following items to a wall of the on-site home the subject of the agreement for the purpose of ensuring the safety of a child or other vulnerable person, but only with the park operator's consent —

(i) furniture;

(ii) a thing to affix the furniture to the wall;

and

(b) the park operator may only refuse consent —

(i) if affixing the item to the wall would disturb material containing asbestos; or

(ii) for a prescribed reason;

and

(c) unless the park operator agrees otherwise in writing, the tenant must remove the item from the wall when the tenant vacates the on-site home and either —

(i) restore the wall to its original condition (taking into account fair wear and tear); or

(ii) compensate the park operator for any reasonable expenses incurred by the park operator in doing that restoration;

and

(d) the cost of affixing the item to the wall, removing it and restoring the wall to its original condition, must be borne by the tenant; and

(e) if the tenant causes damage to the on-site home when affixing or removing the item or restoring the wall to its original condition —

(i) the tenant must notify the park operator in writing that damage has been caused to the on-site home; and

(ii) the park operator may require the tenant to repair the damage and restore the on-site home to its original condition (taking into account fair wear and tear) or compensate the park operator for the reasonable expenses incurred in doing the repair and restoration.

(1B) The park operator is taken to have consented to affixing the furniture or thing to the wall of the on-site home under subsection (1A)(a) if —

(a) the tenant has, in writing, sought the park operator's consent to affix the item to the wall; and

(b) the park operator has not refused consent under subsection (1A)(b) within 7 days after the day the tenant sought the park operator's consent.

Minister for Regional Development representing the Minister for Commerce: To move –

14/29 Page 44, line 4 — To delete "A" and insert:

Except as provided in subsection (5), a

Minister for Regional Development representing the Minister for Commerce: To move –

15/29 Page 45, after line 10 — To insert:

(5) It is a term of every long-stay agreement that a long-stay tenant may affix any prescribed fixture, or make any prescribed renovation, alteration or addition to the agreed premises (the ***prescribed alterations***), necessary to prevent entry onto the agreed premises of a person —

(a) if the person is an excluded tenant whose interest in a long-stay agreement has been terminated under section 74B; or

(b) in any event, if it is necessary to prevent the commission of family violence that the tenant suspects, on reasonable grounds, is likely to be committed by the person against the tenant or a dependant of the tenant.

(6) For the purposes of subsection (5) —

(a) the cost of making the prescribed alterations must be borne by the long-stay tenant; and

(b) the long-stay tenant must give written notice to the park operator of the tenant's intention to make the prescribed alterations; and

(c) work on the prescribed alterations must be undertaken by a qualified tradesperson, a copy of whose invoice the long-stay tenant must provide to the park operator within 14 days of the alterations being completed; and

(d) the prescribed alterations must be effected having regard to the age and character of the property and any applicable strata company by-laws; and

(e) the long-stay tenant must restore the agreed premises to their original condition at the end of the long-stay agreement if the park operator requires the tenant to do so and, where restoration work has been undertaken by a tradesperson, must provide to the park operator a copy of that tradesperson's invoice within 14 days of that work being performed.

Minister for Regional Development representing the Minister for Commerce: To move –

26/29 Page 49, line 6 — To delete "It" and insert:

(1) It

Minister for Regional Development representing the Minister for Commerce: To move –

16/29 Page 49, lines 8 to 10 — To delete the lines and insert:

(a) if a contribution is levied under the *Strata Titles Act 1985* or the *Community Titles Act 2018* — the contribution; and

Minister for Regional Development representing the Minister for Commerce: To move –

27/29 Page 49, after line 18 — To insert:

(2) Despite subsection (1), a term of a long-stay agreement or another written contract, agreement, scheme, deed or other written arrangement between a long-stay tenant and the park operator may provide that the long-stay tenant indirectly

pays, as a component of rent paid under the long-stay agreement, a prescribed charge as defined in the *Rates and Charges (Rebates and Deferments) Act 1992* section 3(1).

Clause 35

Minister for Regional Development representing the Minister for Commerce: To move –

17/35 Page 54, line 14 — To delete "section 38:" and insert:

section 38(1):

Clause 66

Committee Recommendation:

4/66 Page 102, line 23 to page 103, line 28 — To delete the lines and insert:

71A. Orders to terminate agreement for repeated interference with quiet enjoyment or threats or abuse

(1) In this section, a long-stay tenant, or the tenant's guest, engages in ***serious misconduct*** when the tenant or the tenant's guest —

(a) repeatedly interferes, or has repeatedly interfered, with another tenant's quiet enjoyment of the residential park; or

(b) seriously or persistently threatens or abuses, or has seriously or persistently threatened or abused, the park operator or the park operator's employee.

(2) A park operator may apply to the State Administrative Tribunal to terminate a long-stay agreement because the long-stay tenant, or the tenant's guest, has engaged in serious misconduct.

(3) The State Administrative Tribunal may make an order terminating the long-stay agreement if the tribunal is satisfied of all of the following —

(a) the long-stay tenant, or the tenant's guest, has engaged in serious misconduct;

(b) the park operator has given a notice to the long-stay tenant in an approved form that asks the tenant, or the tenant's guest, to stop engaging in the serious misconduct;

(c) despite being asked to stop engaging in the serious misconduct, the long-stay tenant or the tenant's guest has not stopped engaging in the serious misconduct;

(d) terminating the agreement is justified in all the circumstances.

(4) However, the State Administrative Tribunal may refuse to make an order if satisfied that the park operator was wholly or partly motivated to give the notice by the fact that the long-stay tenant had complained to a public authority about the park operator's conduct in relation to the long-stay agreement, or taken steps to secure or enforce the tenant's rights under the agreement.

(5) If the State Administrative Tribunal makes the order, it must also order the long-stay tenant to give vacant possession of the agreed premises to the park operator when the tribunal orders.

Clause 81

Minister for Regional Development representing the Minister for Commerce: To move –

28/81 Page 118, lines 9 to 13 — To delete the lines and insert:

111. Site-only agreements entered into before commencement day cannot be terminated without grounds

A site-only agreement entered into before commencement day cannot be terminated under former section 42 after commencement day.

Hon Alison Xamon: To move —

1/81 Page 119, after line 10 — To insert:

114A. Application of s. 62A to harsh or unreasonable term in pre-commencement long-stay agreement

(1) Subsection (2) applies to a pre-commencement long-stay agreement, including an agreement that has been assigned (whether or not it was assigned before or after commencement day).

(2) Without limiting section 62A and despite another provision of this Act, a party or former party to a pre-commencement long-stay agreement may apply to the State Administrative Tribunal under that section in relation to a term in the agreement that is harsh or unreasonable.

Minister for Regional Development representing the Minister for Commerce: To move –

29/81 Page 119, after line 10 — To insert:

114A. Validation of voluntary sharing arrangements entered into before commencement day

Despite section 13A, if a pre-commencement long-stay agreement includes a voluntary sharing arrangement, the arrangement continues to have effect even if the park operator, the long-stay agreement or the voluntary sharing arrangement fails to comply with the requirements of section 13A.

Committee Recommendation:

5/81 Page 119, lines 20 to 24 — To delete the lines.

Committee Recommendation:

6/81 Page 119, line 25 — To delete "(1) or (2)" and insert:

(1)

Minister for Regional Development representing the Minister for Commerce: To move –

31/81 Page 120, after line 13 — To insert:

(6) Transitional regulations in relation to the amending Act can be made only within 36 months after the commencement day.