



Department of Consumer
and Employment Protection
Government of Western Australia

now Department of Commerce

CCI sub 52

30 April 2009

Your Ref: EISC/CCI/Sub

Our Ref: CP02411/2008v3

Enquiries: Andrew Zell, Policy Officer
92820714

Dr Michael Nahan
Chair
Economics and Industry Standing Committee
Parliament House
PERTH WA 6000



Dear Dr Nahan

**SUBMISSION – PARLIAMENTARY INQUIRY INTO THE PROVISION, USE
AND REGULATION OF CARAVAN PARKS (AND CAMPING GROUNDS) IN
WESTERN AUSTRALIA**

Thank you for your letter, dated 19 March 2009, advising of the Parliamentary inquiry into the provision, use and regulation of caravan parks (and camping grounds) in Western Australia and inviting the Department of Commerce to make a submission to the inquiry.

Please find enclosed the Department's submission to the Economics and Industry Standing Committee for your consideration.

Yours sincerely


Brian Bradley
DIRECTOR GENERAL



Government of **Western Australia**
Department of **Commerce**

Inquiry into the Provision, Use and Regulation of Caravan Parks (and Camping Grounds) in Western Australia.

Submission to the Economics and Industry
Standing Committee

Department of Commerce

30 April 2009

TABLE OF CONTENTS

Executive Summary.....	1
1. Introduction	1
1.1 Glossary.....	1
1.2 Economics and Industry Standing Committee Terms of Reference	3
1.3 Purpose of this submission	3
2. The residential park industry in Western Australia	4
2.1 Residential parks	4
2.2 Long-stay tenants	4
2.3 Estimated population of long-stay tenants in Western Australia.....	5
2.4 Types of accommodation in residential parks	6
2.5 Regional and metropolitan distribution of residential parks	7
2.6 Reduction in sites in long-term caravan parks	7
2.7 Significant market participants	8
2.8 Conclusion	9
3. Legislation	10
3.1 The regulation of residential parks in Western Australia	10
3.2 Summary of residential parks legislation in other jurisdictions	12
3.3 Conclusion	15
4. Administration of the Residential Parks Act	16
4.1 Undertaking research	16
4.2 Disseminating information.....	17
4.3 Giving advice	18
4.4 Undertaking investigations.....	18
5. Development of the Residential Parks Act	21
6. Review of the implementation of the Residential Parks Act	23
6.1 Development of Policy Options.....	23
6.2 Supply-side and demand-side constraints affecting the residential parks industry	25
6.3 Barriers in the marketplace for consumers accessing other residential parks.....	28
6.4 Conclusion	29

7.	Options to address residential parks issues	30
7.1	Long-term policy consideration	30
7.2	Options to amend the Residential Parks Act.....	30
7.3	Development of a compensation fund	35
7.4	Conclusion	35
8.	Other Issues	37
8.1	Lake Joondalup Lifestyle Villages – Lease Terms	37
8.2	Energy Tariffs charged to caravan long-stay tenants.....	37
8.3	Pensioners and Seniors Rebate Scheme	38
8.4	The development of Protocols to assist agencies in responding to a park closure.....	38

The Department of Commerce unique identifier for this document (objective reference) is A995578.

Executive Summary

On 10 March 2009, the Economics and Industry Standing Committee commenced an inquiry into the provision, use and regulation of caravan parks (and camping grounds) in Western Australia.

The Consumer Protection Division of the Department of Commerce (Consumer Protection) administers the *Residential Parks (Long-stay Tenants) Act 2006* and welcomes the opportunity to provide a submission to this inquiry. The submission focuses on one aspect of caravan parks and camping grounds, namely residential parks.

Residential parks – long-stay tenants and significant industry participants

In Western Australia, generally residential parks are either:

- “mixed-use” parks – residential parks that cater for both long-stay tenants and holiday makers. These parks often supplement their off-season income with long-stay tenants; and
- “lifestyle villages” – residential parks which are developed to cater solely for long-stay tenants. Lifestyle villages are sometimes referred to as park home estates.

Consumer Protection estimates that there are at least 10,000 long-stay sites accommodating approximately 15,000 to 20,000 long-stay tenants in Western Australia. The majority of long-stay tenants reside in mixed-use parks in a range of accommodation types and not necessarily a traditional caravan or motor home.

The residential park industry is characterised by a significant number of mixed-use parks and two national companies who operate groups of parks, National Lifestyle Villages (NLV) and Aspen Parks. It is estimated that, within Western Australia, around 1,600 people reside in NLV parks, with the potential to accommodate over 4,000 people in the future, and at least 1,300 people reside in residential parks operated by Aspen Parks.

Residential parks have historically provided accommodation for persons who, through choice or economic necessity, have decided to live in modest on-site caravans in parks located in suburban Perth and the state’s regional towns and remote locations. Over the past decade, however, there has also been a growing trend towards people living long-term in more sophisticated residential parks.

Since 1997, there has been a significant decline in the number of traditional mixed-use parks in Western Australia. Given that many residential parks are situated in locations that are suitable for residential or tourism redevelopment and other factors, there is strong evidence to suggest that the lifestyle village industry will continue to expand, while traditional mixed-use caravan parks will continue to close.

The regulatory framework of residential parks in Western Australia

In Western Australia, all residential parks, other than those that are operated by local government authorities on Crown land, are required to be licensed under the *Caravan Parks and Camping Grounds Act 1995*.

The *Residential Parks (Long-stay Tenants) Act 2006* (Residential Parks Act) applies to all long-stay tenancy agreements on residential parks, regardless of whether the parks are operated by private businesses or local authorities.

The Residential Parks Act focuses on the contractual relationship between park operators and tenants and is underpinned by the principles established under the *Residential Tenancies Act 1987*.

The Residential Parks Act was not developed with the intention of addressing the broader social, housing, tourism and planning issues associated with the use of caravan parks, or to intervene in the supply, demand or use of sites.

Implementation of the Residential Parks Act

The extensive consultation process used to develop the Act identified that long-stay tenants require significant disclosure material to assist them to make an informed decision about the suitability of residential park living. As a result of the Act's introduction, long-stay tenants who resided in a park prior to the Act's commencement and did not have clear extended tenure are now more aware of a park operator's ability to terminate a periodic tenancy agreement without grounds.

In addition, some tenants have believed that prior to the introduction of the Act they had "tenure for life" through informal arrangements with park operators. When the Act came into force many park operators chose to offer existing tenants a periodic tenancy, rather than a fixed-term over an extended period.

The caravan park industry as a whole has experienced significant change since the introduction of the Act, primarily due to a sudden rise in land values and population, which have greatly increased demand for land and housing. Some operators are known to be considering closing their caravan parks.

The various factors described above have led some tenants to suggest that the Residential Parks Act should now be amended to provide greater security of tenure for tenants who may be adversely affected if a park operator terminates a tenancy agreement.

Policy considerations for review of the Residential Parks Act

Consumer Protection considers that any decision to amend or review the Residential Parks Act should be considered in the context of the caravan park industry as a whole, taking into account the drivers that are impeding the growth of the industry, the constraints consumers face from freely accessing alternative residential park sites or other housing options and the risks associated with owning a significant chattel which is positioned on property leased from a third party. The impact of additional regulation on caravan park operators would also need to be considered, including the long-term viability of the industry and its ability to attract investment.

Consumer Protection has undertaken preliminary examination of options to address the concerns of existing long-stay tenants who have not been able to negotiate extended fixed-term agreements with park operators. Such options include:

- increasing the minimum period of notice to be given to long-stay tenants;
- mandating extended fixed-term agreements to replace periodic site-only agreements, particularly for tenants who occupied sites prior to the commencement of the Act;
- implementing tenure provisions similar to those used in the Queensland or New South Wales legislation that governs residential parks; and/or
- the development of a fund to assist long-stay tenants who are required to relocate as a result of the closure of a residential park.

Early examination of these options suggest that each is likely to have wider consequences that would result in higher costs for long-stay tenants and/or park operators and may produce significant market distortions that may affect the long-term viability of residential parks. Some of the options may also create a discrepancy between the original legislative principles that underpin general residential tenancy and residential park tenancy.

Consumer Protection is of the view that should residential park living be considered an appropriate option for Western Australia's long-term housing needs, solutions to support the maintenance and growth of this niche housing sector are likely to require a "whole of government" approach that takes into account the State's planning, housing and tourism strategies and the ageing population.

Section 96 of the Residential Parks Act requires the Minister for Commerce to arrange for a review of the operation of the Act to be carried as soon as practicable five years after the commencement of the Act. A full analysis of the operation of the Act will be undertaken during the statutory review due in 2012.

1. Introduction

1.1 Glossary

Although terminology throughout the residential park industry is inconsistent, Consumer Protection has attempted to use consistent terminology throughout this submission to enable the reader to better understand the issues involved.

ABS – refers to the Australian Bureau of Statistics.

Caravan – means a vehicle that is fitted or designed for habitation. (s5, CPCG Act).

Caravan park – means a caravan park (including a lifestyle village) –

- operated or required to be operated under a licence issued under the *Caravan Parks and Camping Grounds Act 1995*;
- operated by a local government under the *Caravan Parks and Camping Grounds Act 1995*; or
- operated by a public sector body. (s5, CPCG Act)

CPCG Act – refers to the *Caravan Parks and Camping Grounds Act 1995*.

CPCG Regulations – refers to the *Caravan Parks and Camping Grounds Regulations 1997*.

Consumer Protection – refers to the Consumer Protection Division of the Department of Commerce.

Lifestyle village – means a caravan park, or an area within a caravan park, that includes long-stay sites that are occupied or intended to be occupied, solely or principally by individuals having a particular interest or quality in common. (Glossary, Residential Parks Act).

Long-stay agreement – means a residential park tenancy agreement –

- for a fixed term of 3 months or longer; or
- for a periodic tenancy that continues for 3 months or longer, other than an agreement entered into for the purpose of –
 - conferring on an individual the right to occupy a site or other park premises in a residential park for a holiday; or
 - conferring on an employee or agent of a park operator the right to occupy a site or other park premises in the residential park during the term of the employment or agency. (s5, Residential Parks Act).

Long-stay site – means a site at a caravan park which is to be occupied consecutively by the one person or group of persons for any period of time (Sch8, CPCG Regulations).

Long-stay tenant or tenant – means the grantee of a right to occupancy under a long-stay agreement (Glossary, Residential Parks Act).

1.1 Glossary (continued)

On-site home agreement – means a long-stay agreement under which the long-stay tenant has the right to occupy a relocatable home provided by the park operator (Glossary, Residential Parks Act).

Park home – a caravan in respect of which a vehicle licence is not required under the section 15 of the *Road Traffic Act 1974*, because it could not be drawn by another vehicle on a road due to its size (r4, CPCG Regulations).

Relocatable home – means a vehicle (including a caravan), building, tent, or other structure that is fitted or designed for use as a residence (whether or not it includes bathroom or toilet facilities) and that is or can be parked, assembled or erected on a site in a residential park. (Glossary, Residential Parks Act).

Residential park – means a caravan park in which there are long-stay sites. (Glossary, Residential Parks Act).

Residential Parks Act – refers to the *Residential Parks (Long-stay Tenants) Act 2006*.

Residential Parks Regulations – refers to the *Residential Parks (Long-stay Tenants) Regulations 2007*.

Residential Tenancies Act – refers to the *Residential Tenancies Act 1987*.

Residential park tenancy agreement – means an agreement made between an individual and a park operator under which the park operator for valuable consideration grants to the individual –

- the right to occupy a relocatable home provided by the park operator on a site in the residential park; or
- the right to occupy a relocatable home provided by the individual on a site in the residential park.
(Glossary, Residential Parks Act).

Short-stay site – means a site at a caravan park which is to be occupied consecutively by the one person or one group of persons for no longer than three months (Sch8, CPCG Regulations).

Site – in relation to a residential park, means an area of land in the park that is set aside for the use of one relocatable home, except such an area that is a lot in relation to a survey-strata scheme under the *Strata Titles Act 1985*. (Glossary, Residential Parks Act).

Site-only agreement – means a long-stay agreement under which the long-stay tenant has the right to occupy a relocatable home provided by the long-stay tenant on a site in a residential park (Glossary, Residential Parks Act).

1.2 Economics and Industry Standing Committee Terms of Reference

On 10 March 2009, the Economics and Industry Standing Committee commenced an inquiry into the provision, use and regulation of caravan parks (and camping grounds) in Western Australia.

In particular, the Committee will investigate the:

- structure, conduct and performance of the caravan park industry;
- demand, supply and costs, and trends thereof, of caravan park sites and related services;
- supply and demand for long and short-stay sites including camping sites; and
- impact of existing legislation, and state and local government policies regulating caravan parks, particularly relating to:
 - maintaining a viable caravan park industry,
 - protecting the rights of operators and users, and
 - providing an adequate mix of long stay and short-stay facilities and sites.

1.3 Purpose of this submission

The purpose of this submission is to specifically address the Committee's Terms of Reference from the perspective of Consumer Protection in order to:

- provide information gathered by Consumer Protection on the size and nature of the residential park industry in Western Australia;
- provide details of the regulation of residential parks in Western Australia;
- provide details of the development and implementation of the Residential Parks Act and supporting regulations;
- outline the role of the Consumer Protection in administering the Residential Parks Act;
- outline initiatives and policy considerations undertaken by Consumer Protection to address issues arising from the commencement of the Residential Parks Act; and
- provide details of past, current and emerging issues relating to residential parks.

2. The residential park industry in Western Australia

2.1 Residential parks

In Western Australia, generally residential parks are either:

- “mixed-use” parks – residential parks that cater for both long-stay tenants and holiday makers. These parks often supplement their off-season income with long-stay tenants; and
- “lifestyle villages” – residential parks which are developed to cater solely for long-stay tenants. Lifestyle villages are sometimes referred to as park home estates.

The majority of long-stay tenants reside in mixed-use parks¹. In general, mixed-use parks cater for all types of caravan park users, including short-term holidaymakers, individuals that occupy holiday homes sites periodically and long-stay tenants.

Lifestyle villages generally offer a different experience than mixed-use parks. Lifestyle villages are often marketed to individuals over 45 years of age and are designed specifically to cater to long-stay residents. Many lifestyle villages provide amenities including swimming pools, recreation centres and storage areas for boats and smaller caravans.

Currently, the lifestyle village industry in Western Australia is growing. New lifestyle village developments are being built in the metropolitan region and in regional areas such as Moora and Bunbury. This may be attributable to the increased number of people reaching retirement age who are seeking a lower cost alternative to traditional home ownership.

It is important to note that long-stay accommodation in residential parks may involve a range of accommodation types and not necessarily a traditional caravan or motor home (see 2.4).

2.2 Long-stay tenants

In 2003, the Australian Housing and Urban Research Institute (AHURI) published the report *On the Margins? Housing risk among caravan long-stay tenants* which identified the key groups of long-stay tenants as:

- retirees and others attracted by the location and communal lifestyle of park living who may be on low, fixed incomes, and typically own a manufactured home;
- itinerant or seasonal workers in low paid jobs;
- ‘last resort’ residents who do not have the financial means to gain access to housing in any of the mainstream sectors and may be on a public housing waiting list; and

¹ Market research survey undertaken by a consultant for Consumer Protection in 2007 (see 4.1).

2.2 Long-stay tenants (continued)

- individuals using caravan parks as crisis accommodation.²

In addition to the above, residential parks in Western Australia are used to provide housing to mining industry workers particularly in regional Western Australia. Site rents can vary greatly between towns. For example, a long-stay site in Karratha can range from \$200 to \$450 a week, while a long-stay site in Newman is approximately \$150 a week.

2.2.1 Long-stay tenants' representatives

The peak body representing the interests of long-stay tenants who own a relocatable home is the Park Home Owners Association of WA (PHOA). The PHOA has approximately 800 members representing residents in metropolitan and regional parks and promotes the interests of their members by raising awareness and lobbying relevant agencies.

The peak body representing tenants' interests generally is the Tenants Advice Service of Western Australia (TAS), a not-for-profit, community legal centre funded to assist residential tenants. As well as providing tenancy information, advice and advocacy to the public, TAS lobbies for legal and policy reform to improve the legal and social position of all residential tenants in Western Australia.³

2.3 Estimated population of long-stay tenants in Western Australia

There is no central source for recording the number of long-stay tenants in Western Australia. Consumer Protection has developed an estimation derived from various sources, many of which do not have comparable information.

In 2004, Consumer Protection and the Department of Local Government and Regional Development conducted a survey of local governments which reported that 9,753 long-term caravan sites and 11,160 short-term caravan sites are located in Western Australia. Thirteen local governments did not provide a response to the survey, including the Shire of Augusta-Margaret River and the Shire of Carnarvon, which together are known to have significant numbers of caravan sites.

Recently, PHOA estimated that there are 20,000 long-stay tenants residing in Western Australia while CIAWA estimated that 17,500 long-stay tenants reside in this State.

²Wensing, E, Holloway, D, Wood, M, 2003 *On the margins? Housing risk among caravan park residents* for the Australian Housing and Urban Research Institute (AHURI).

³ Tenants Advice Service 2009, <http://www.taswa.org/about_TAS.htm>, viewed 15 April 2009.

2.3 *Estimated population of long-stay tenants in Western Australia - Continued*

The ABS publishes quarterly tourism accommodation statistics that report caravan park occupancy information and Census statistics that report information about the principal place of residence of individuals and households.

According to the 2006 Census, 6,079 households reside permanently in caravan parks, houseboats, and cabins in Western Australia⁴. For the purposes of the Census, it is possible for relocatable home owners to mistakenly describe themselves as owners of “dwellings” instead of “caravans”. Therefore, ABS data is not sufficient in calculating the number of long-stay tenants.

On the basis of the available data and taking into account the seasonal fluctuations of the market, Consumer Protection estimates that there are at least 10,000 long-stay sites accommodating approximately 15,000 to 20,000 long-stay tenants in Western Australia.

2.4 **Types of accommodation in residential parks**

Long-stay tenants may occupy a variety of relocatable homes including:

- cabins;
- sea containers or “dongas” converted for residential purposes;
- park homes or manufactured homes ranging in size from 65 square metres to over 150 square metres; and
- caravans with various types of improvements and annexes and in various states of repair.

Under the CPCG Act, relocatable homes including manufactured homes, and any annexes to those structures, must be maintained in a condition such that they are able to be moved or towed within 24 hours.⁵ However, it is unlikely that many relocatable homes could be easily moved due to the:

- age of the relocatable home;
- condition of the relocatable home;
- annexes attached to the relocatable home which could cause significant damage to the dwelling should they be removed; and
- placement and location of the relocatable home in the caravan park.

⁴ Australian Bureau of Statistics, *2006 Census of Population and Housing*, cat. no. 2068.0, ABS, Canberra, 2007.

⁵ Regulation 15, *Caravan Parks and Camping Grounds Regulations 1997(WA)*.

2.5 Regional and metropolitan distribution of residential parks

The ABS defines “long-term caravan parks” as caravan parks where the majority of paying guests occupy sites for periods of two months or longer.

According to the most recent ABS tourism indicators, there are 197 caravan parks operating in Western Australia including 26 long term caravan parks.⁶ However, the ABS excludes caravan parks with less than 40 sites.

Consumer Protection estimates that approximately 300 caravan parks are operating in Western Australia with approximately 70 caravan parks operating in the Perth metropolitan area and 230 operating in other areas. The majority of caravan parks are able to accommodate long-stay tenants.⁷

2.6 Reduction in sites in long-term caravan parks

The ABS reports that, since 1997, Australia has experienced a decline in caravan parks (-11.1%), long-term caravan parks (-66.0%) and sites in long-term caravan parks (-11.4%) throughout Australia.

Western Australia has also experienced similar declines in caravan parks (-9.2%), long-term caravan parks (-65.8%) and sites in long-stay caravan (7,801 to 6,905 or -11.0%).⁸

In May 2007, Tourism Western Australia published a report titled, “*Understanding the Caravan Park Industry in WA*”, which attempted to measure and identify the key factors that are likely to affect caravan parks in the next five years.

The report identifies a number of current and emerging issues that could affect the long term supply of residential park sites including:

- increased operating costs faced by park operators;
- increased tourism demand;
- potential land zoning issues;
- higher land values; and
- the perceived lack of commitment by certain local governments to retain caravan parks.⁹

⁶ Australian Bureau of Statistics, *Tourism Accommodation Australia*, cat.no. 8635.0, ABS, Canberra, 2008.

⁷ Estimate derived from a 2004 survey of local government undertaken by Consumer Protection and DLGRD.

⁸ Ibid.

⁹ Tourism Western Australia, *Understanding the Caravan Park Industry in Western Australia*. Tourism WA, Perth, 2007.

2.6 Reduction in long-stay sites - continued

The report also noted that one in ten park operators indicated that they were likely to close or redevelop their parks into residential accommodation by 2012.

The report states that the demand for caravan park accommodation fluctuates significantly between seasons. This fluctuation may have an affect on the number of long-stay tenants as some sites, particularly in mixed-use parks, are used for holiday accommodation in peak tourist periods and for long-stay tenants in off-peak tourist periods.

2.7 Significant market participants

In Western Australia, the residential park industry is characterised by a significant number of local shire and owner-occupier managed parks and two national companies who operate groups of parks, National Lifestyle Villages (NLV) and Aspen Parks.

NLV caters to long-stay tenants and operates eight lifestyle villages in various stages of development. NLV manages the purchase and sale of park homes on their parks, offers fixed-term leases of a significant tenure and charges a weekly site and facilities fee.¹⁰ It is estimated that around 1,600 people reside in NLV parks, with the potential for this number to increase to over 4,000.

Aspen Parks, managed by a subsidiary of the Aspen Group, was established in June 2004 and has acquired 11 properties (caravan parks, residential parks and resorts) in Western Australia.¹¹ Consumer Protection estimates that at least 1,300 long-stay tenants reside in residential parks operated by Aspen Parks. Consumer Protection understands that Aspen Parks offer periodic tenancy agreements.

The peak body that represents caravan park operators, lifestyle village operators, caravan dealers, manufacturers and service providers is the CIAWA. The CIAWA is understood to have members representing 137 caravan parks.

¹⁰ National Lifestyle Villages 2009, < www.nlv.com.au >, viewed 22 April 2009.

¹¹ Aspen Parks 2009, < www.aspenparks.com.au >, viewed 22 April 2009.

2.8 Conclusion

Residential parks have historically provided accommodation for persons who, through choice or economic necessity, have decided to live in modest on-site caravans in parks located in suburban Perth and in regional towns and remote locations. In many instances, residential parks have been, or are, located in locations that are desirable for sale or redevelopment into residential housing. Over the past decade, there has also been a growing trend towards people living long term in more sophisticated residential parks.

Since 1997, there has been a significant decline in the number of traditional mixed-use parks in Western Australia. Given the indications that many park operators are considering closing or redevelopment in the next five years, there is strong evidence to suggest that the lifestyle village industry will continue to expand, while traditional mixed-use caravan parks will continue to close.

3. Legislation

In Western Australia, all residential parks, other than those that are operated by local government authorities on Crown land, are required to be licensed under the CPCG Act.¹²

The Residential Parks Act applies to all long-stay agreements on residential parks, regardless of whether the parks are operated by private businesses or local authorities.

Specific provisions regulating residential parks also operate in South Australia, Queensland, New South Wales, and Victoria. In the Australian Capital Territory and Tasmania, residential park tenancy arrangements are regulated by the relevant residential tenancies legislation operating in those jurisdictions. The Northern Territory does not regulate residential park tenancies.

3.1 The regulation of residential parks in Western Australia

3.1.1 *Caravan Parks and Camping Grounds Act 1995*

The general control, licensing and regulation of caravan parks and camping grounds, is provided by the *Caravan Parks and Camping Grounds Act 1995* and the *Caravan Parks and Camping Grounds Regulations 1997*. The CPCG Act and CPCG Regulations are administered by the Department of Local Government and Regional Development.

In relation to residential parks, *inter alia*, the CPCG Act:

- requires that residential parks, including lifestyle villages be licensed;
- regulates the number of relocatable homes that can be placed on a site and the distance between sites; and
- requires that relocatable homes, including park homes, are maintained in such a condition that they are able to be moved under their own power or towed within 24 hours.

3.1.2 *Residential Parks (Long-stay Tenants) Act 2006*

The Residential Parks Act commenced on 3 August 2007 and regulates the tenancy arrangements of individuals who occupy a long-stay site on a residential park for three months or longer.¹³

¹² Sections 6 and 15, *Caravan Parks and Camping Grounds Act 1995*(WA).

¹³Section 5, *Residential Parks (Long-stay Tenants) Act 2006* (WA).

3.1.2 Residential Parks (Long-stay Tenants) Act 2006 - continued

The Residential Parks Act regulates the long-stay tenancy arrangements of individuals who rent both a relocatable home and site from a park operator (on-site agreement) and individuals who rent the site only from a park operator to place a relocatable home that they own (site-only agreements). Lease agreements can be for a fixed-term (an agreement with a specified end date) or a periodic term (an ongoing agreement with no end date).

The key purpose of the Residential Parks Act is to maintain and manage the contractual relationship between a long-stay tenant and a residential park operator.

The Residential Parks Act requires that:

- all agreements be in writing;
- park operators provide substantial disclosure material to assist prospective long-stay tenants in deciding if park living is suitable for their needs;
- a minimum five-day cooling off period applies to site-only agreements;
- a minimum 180 days notice must be given for a park operator to terminate a periodic on-site tenancy agreement;
- parks with a minimum of 20 long-stay sites establish a site-only Park Liaison Committee;
- compensation be paid for certain expenses if a fixed-term long-stay agreement is terminated early for reasons other than a breach of agreement; and
- the State Administrative Tribunal determines disputes.

3.1.3 Residential Tenancies Act 1987

Prior to the commencement of the Residential Parks Act, the occupancy agreements between long-stay tenants and park operators were regulated by the Residential Tenancies Act.

The Residential Tenancies Act regulates the contractual relationship of residential tenancies and sets out the principle of fair dealing between landlords and tenants.

The provisions of the Residential Tenancies Act continue to apply to those long-stay tenants who entered into fixed-term agreements prior to the commencement of the Residential Parks Act.

A statutory review of the Residential Tenancies Act has recently been completed.

3.2 Summary of residential parks legislation in other jurisdictions

3.2.1 Queensland

In Queensland, long-stay tenants are regulated as follows:

- individuals who own a manufactured home that is placed on a site rented from a park operator in a residential park are regulated by the *Manufactured Homes (Residential Parks) Act 2003* (Manufactured Homes Act); and
- any other individual who resides in a residential park as their permanent place of residence is regulated by the *Residential Tenancies Act 1994*.

For the purposes of the Manufactured Homes Act, a manufactured home is defined as a structure, other than a caravan or tent, that—

- has the character of a dwelling house; and
- is designed to be able to be moved from one position to another; and
- is not permanently attached to land.

Key provisions of the Manufactured Homes Act include:

- written contracts that contain mandatory standard clauses;
- tenancy agreements which are ongoing;
- a 28 day cooling-off period;
- standard forms;
- significant disclosure information must be given to a tenant prior to entering into a tenancy agreement;
- the introduction of home owners' committees; and
- dispute resolution from the Queensland Commercial and Consumer Tribunal.

Under the Manufactured Homes Act, a tenancy agreement may only be terminated by:

- mutual consent between the parties;
- the tenant providing appropriate notice to the park operator; and
- the park owner obtaining an order from the Commercial and Consumer Tribunal on the grounds that a tenant breached the agreement or the park owner wishes to use all or part of the park land for another purpose.

3.2.2 Residential Parks Act 1998 (NSW)

In New South Wales, long-stay tenants are regulated by the *Residential Parks Act 1998*. Two types of tenancy agreements operate under the *Residential Parks Act 1998*:

- residential site agreement – a tenancy agreement for a site where the resident places a caravan with a rigid annex or a manufactured home that they own; and
- moveable dwelling agreement – a tenancy agreement for a site where the resident places a caravan without a rigid annex that they own or a tenancy agreement for both the site and the relocatable home.

Under the *Residential Parks Act 1998* a park operator can not terminate a fixed-term residential site agreement at the end of the fixed-term. At the expiry of the fixed-term, a residential site agreement becomes a continuous tenancy agreement. Continuous residential site agreements allow tenants to occupy a site, perpetually.

Key provisions of the *Residential Parks Act 1998* include:

- written contracts that contain mandatory standard clauses;
- a 28 day cooling-off period;
- significant disclosure material to be given to a prospective tenant prior to entering into a tenancy agreement;
- the introduction of Park Liaison Committees;
- compensation to be provided to a park resident if a park operator terminates the agreement under certain circumstances; and
- dispute resolution in the New South Wales Consumer, Trader and Tenancy Tribunal.

Under the *Residential Parks Act 1998* residential site agreements, or agreements for a tenant to occupy their own relocatable home on a site provided by a park operator, may only be terminated by:

- mutual consent between the parties;
- the tenant providing appropriate notice to the park operator; and
- the park operator obtaining an order from the New South Wales Commercial and Consumer Tribunal on the grounds that a tenant breached the agreement or the park owner wishes to use all or part of the park land for another purpose.

3.2.3 Parts 4 and 14 of the Residential Tenancies Act 1997 (VIC)

In Victoria, Parts 4 and 14 of the *Residential Tenancies Act 1997* regulates the tenancy arrangements of long-stay tenants. Individuals who occupy sites under fixed-term agreements for greater than five years are not required to comply with these regulations.

Key provisions of the *Residential Tenancies Act 1997* that relate to residential park tenancies include:

- significant disclosure material to be given to a prospective tenant prior to entering into a tenancy agreement;
- increased periods of notice from a minimum of 60 days to a minimum of 120 days in the event that a park operator wishes to terminate a periodic agreement without grounds;
- a six month period of notice in the event that a park operator wishes to terminate a periodic agreement due to the park closing down or has been sold and the land is being used for another purpose; and
- dispute resolution in the Consumer, Trader and Tenancy Tribunal.

3.2.4 Residential Parks Act 2007 (SA)

The South Australian *Residential Parks Act 2007* commenced on 5 November 2007 and is designed to regulate individuals who reside in parks as their principal place of residence, whether they live in a dwelling rented from the park operator, or install their own home and rent the site. The *Residential Parks Act 2007* does not regulate tenancies on lifestyle villages.¹⁴

Key provisions of the *Residential Parks Act 2007* include:

- agreements must be in writing;
- disclosure material must be given to a prospective resident prior to entering into an agreement;
- park rules must reflect issues in the Act; and
- limited right of entry by a park operator to a rented site.

¹⁴ South Australia, *Parliamentary Debates* House of Assembly, 31 August 2006 (Jennifer Rankine).

3.3 Conclusion

The application of residential parks tenancy legislation varies between jurisdictions. For those jurisdictions that regulate residential parks, New South Wales, Queensland, Western Australia, South Australia and Victoria, similar provisions across residential park regulations include the requirement for:

- written agreements;
- disclosure material to be given to tenants prior to entering into agreements;
- dispute resolution through a tribunal; and
- increased notice periods to terminate a periodic on-site agreement without reason, compared to residential tenancies legislation operating in each jurisdiction.

Differences in residential park regulations across jurisdictions include the application of the regulations to particular segments of the residential parks industry, ongoing agreements and the provisions relating to the termination of agreement.

4. Administration of the Residential Parks Act

Section 85 of the Residential Parks Act provides for the Commissioner for Consumer Protection to:

- undertake research into matters relating to the interests of parties to long-stay agreements;
- produce reports and disseminating information relating to the interests of parties to long-stay agreements;
- give advice relating to, or affecting the interests of parties to long-stay agreements;
- investigate offences against the Act arising out of any long-stay agreement and the taking of action by negotiation, prosecution of an offence or otherwise;
- report to the Minister on matters referred to the Commissioner by the Minister or investigated by the Commissioner.

In addition to the above, Consumer Protection provides a bond administration service as outlined in Part 2 Division 2 of the Residential Parks Act. Authorised deposit-taking institutions (ADI) may also administer residential park bonds.

4.1 Undertaking research

In January 2008, Consumer Protection engaged a consultant to undertake an independent market research assessment to determine the level of compliance with the Residential Parks Act and whether the commencement of the Act has had any adverse effects of long-stay tenants or park operators.

The survey took into account the views of 450 long-stay tenants representing 75 parks across the State and “mystery shopper” visits of ten parks in Perth and Broome. The survey was carried out between February and June 2008.

Key findings of the market research were:

- 53% of respondents were offered or had in place a fixed-term agreement;
- park operators are less likely to offer fixed-term agreements and in particular, fixed-term agreements of a term greater than five years since the commencement of the Act;
- there was a significant level of confusion regarding the receipt of the prescribed information that is required to be provided by park operators;
- survey participants from 29 parks indicated that their park did not have a Park Liaison Committee; and
- eighty-five percent (85%) of survey participants indicated that they were 55 years of age or older.

4.1 Undertaking research - continued

In response to the issues highlighted by the results of the market research Consumer Protection implemented a program of proactive compliance (see 4.4.2).

4.2 Disseminating information

4.2.1 Publications/website

Immediately prior to the implementation of the Residential Parks Act, Consumer Protection:

- produced and distributed an information booklet, titled "Park Living" which is required under section 11(1)(b) of the Residential Parks Act to be given to prospective long-stay tenants before an agreement is made;
- ensured copies of the prescribed agreements and forms were available for download from the Consumer Protection website;
- developed a publication titled "Park Liaison Committees - Commissioners Guidelines" pursuant to section 60(3) of the Act; and
- wrote to ADIs about their requirements in dealing with rental bonds under the new regulations.

The publications were produced in consultation with the relevant stakeholders, including officers from Consumer Protection, TAS, CIAWA and PHOA.

4.2.2 Information sessions for long-stay tenants

Following a competitive tendering process, Consumer Protection engaged TAS to develop and deliver information sessions to prospective and current long-stay tenants about their rights and responsibilities under the Residential Parks Act.

Commencing in August 2007, 18 information sessions were held in metropolitan and regional centres attracting over 900 attendees. Advertisements about the information sessions were placed in the *Have a Go News* and *The West Australian*. Flyers and information about the sessions were distributed via local government offices, stakeholder newsletters, metropolitan and regional libraries, noticeboards in regional shopping centres, residential park operators, park liaison committees and the offices of Consumer Protection.

A version of the information session was recorded on DVD and distributed to residents who were unable to attend the scheduled sessions.

4.2.3 Information sessions for park operators

CIAWA developed information sessions designed to inform park operators of their rights and responsibilities under the Residential Parks Act. Consumer Protection supported CIAWA in delivering 14 information sessions held in metropolitan and regional centres attracting 192 attendees. Also, Consumer Protection and CIAWA met with individual caravan park operators in Exmouth, Tom Price, Derby, Kalgoorlie and Halls Creek.

Consumer Protection assisted the CIAWA in the production of an information booklet for park operators, which was distributed at information sessions and made available through the CIAWA.

4.3 Giving advice

Advice regarding residential park tenancies is available from Consumer Protection to individuals;

- who attend the front counter of the seven metropolitan and regional offices of Consumer Protection;
- who telephone the Consumer Protection Contact Centre; and
- via e-mail.

Consumer Protection also administers a grant program where funding is made available to non-government organisations that provide education and advice to tenants. Funding has been provided to organisations such as community legal centres and the TAS.

4.4 Undertaking investigations

4.4.1 Complaints

Consumer Protection receives residential park complaints in the form of letters, completed complaint forms, and email.

Depending on the nature of the complaint, Consumer Protection can:

- conciliate disputes between long-stay tenants and operators;
- advise the parties about their rights to take a matter to the State Administrative Tribunal for a formal determination;
- gather sufficient evidence of a breach of the legislation to institute legal proceedings in the Magistrate's Court.

During 2007/08, Consumer Protection investigated 30 residential park related complaints. The table that follows provides a summary of the outcome of each of these complaints.

4.4.1 Complaints - continued

Table 2 -- 2007/2008 Residential Parks Complaints Data					
Complaint type	No. of Complaints	Outcomes			
		Advice / education provided to parties	Complaint lapsed or withdrawn	Agreement reached between the parties to settle	No conciliation resolution-trader did not accept the result
Contractual dispute about the meaning of terms and conditions	6	5		1	
Poor communication between trader and consumer	4	3		1	
Consumer did not understand law	11	4	3	4	
Unreasonable expectation by consumer	1	1			
Unreasonable delay by trader	1			1	
Trader did not understand law	2	1		1	
Trader did not acknowledge that a problem exists	1				1
Advertising and marketing – misleading	3	2	1		
Harsh or unconscionable	1			1	
Total	30	16	4	9	1

Since July 2008, Consumer Protection has investigated 16 residential park related complaints. As seen from the table below, 8 complaints are ongoing.

Table 3 -- 2008/2009 Residential Parks Complaints Data					
Complaint type	Complaint	Outcomes			
		Advice / education provided to parties	Complaint lapsed or withdrawn	No conciliation resolution-trader did not accept the result	Ongoing
Contractual dispute about the meaning of terms and conditions	11	2	1		8
Consumer did not understand law	3	3			
Unreasonable expectation by consumer	1			1	
Amount or type of redress	1		1		
Total	16	5	2	1	8

4.4.2 Proactive compliance

As a result of a number of issues highlighted by the market survey and to encourage residential park operators to comply with their responsibilities under the Residential Parks Act, Consumer Protection initiated a proactive compliance program.

A focus of the program is to visit park operators and inform them about their rights and obligations under the Residential Parks Act to facilitate compliance. During the proactive visits, Consumer Protection assesses whether tenancy agreements are compliant, the required disclosure material has been supplied to long-stay tenants and where required, determine that Park Liaison Committees have been established.

The table below indicates the number of proactive visits conducted by Consumer Protection since June 2007.

Table 4: Proactive visits undertaken since June 2007

Region	Number of parks/proactive visits
Metropolitan and Peel	29
Albany	13
Karratha	15
Kununurra	16
Bunbury	8
Geraldton	45
Kalgoorlie	Numbers not recorded. (See 4.2.3)

Through the delivery of the proactive compliance program, Consumer Protection found that a small number of park operators, particularly in regional areas have not provided written agreements and the required disclosure material to existing residents.

Also, in some instances, long-stay tenants have refused to sign proposed agreements provided by park operators. The Residential Parks Act continues to apply to those long-stay tenants who are not offered or refuse to sign a proposed long-stay agreement.

The proactive compliance program is active and ongoing. The aim of the program is to make contact with every residential park and to provide further assistance to park operators where issues of non-compliance have been identified.

Consumer Protection will continue to work with long-stay tenants and residential park operators to ensure that they comply with the requirements set out in the Residential Parks Act.

5. Development of the Residential Parks Act

The Residential Parks Act was developed as a result of a 2001 Government election commitment to "create more certainty for residents in caravan parks and home park owners."¹⁵

Prior to the commencement of the Residential Parks Act, most long-stay tenancies were made on an informal basis, often on a handshake, and without written agreements. At that time, long-stay tenancies were regulated under the Residential Tenancies Act.

In late 2001, Consumer Protection appointed Stamfords Consultants to undertake the first phase of a statutory review of the Residential Tenancies Act. Stamfords undertook consultation in the form of public meetings, focus groups and individual interviews to identify any issues regarding the operation of the Residential Tenancies Act.

Following the analysis of the first phase of consultation, Stamfords released a report titled *Statutory Review of the Residential Tenancies Act 1987 – Final Report* (the Stamfords Report). The Stamfords report contained 24 recommendations relating to caravan parks and park home tenancies¹⁶ and was tabled in Parliament in September 2002.

Consumer Protection released the Stamfords Report to stakeholders for a second phase of public consultation. A total of 49 written submissions were received during this phase of consultation. During the analysis of these submissions, it became apparent that the range and complexity of issues within the residential parks industry required stand alone legislation that recognised that residential park tenancies are different from traditional tenancy relationships.

In August 2003, the (then) Parliamentary Secretary to the Minister for Consumer Protection convened a working group of residential park stakeholders to consider the recommendations in the Stamfords Report.

Members of the working group were:

- the Parliamentary Secretary to the Minister for Consumer Protection;
- Officers from Consumer Protection;
- PHOA representatives; and
- CIAWA representatives.

¹⁵ Western Australia Labor Party, 2001 State Election Party Platform. Pg6.

¹⁶ Stamfords Advisors Consultants 2002, *Statutory Review of the Residential Tenancies Act 1987 – Final Report* for Consumer Protection, Chapter 15.

5. *Development of the Residential Parks Act - continued*

The outcomes negotiated through the working group formed the basis of the *Residential Parks (Long-stay Tenants) Bill 2004*. The 2004 Bill was introduced in the Legislative Assembly on 11 November 2004 and lapsed in January 2005 as Parliament was prorogued for the 2005 State Election.

After conducting meetings with key stakeholders in early 2005, the *Residential Parks (Long-stay Tenants) Bill 2005* was re-introduced in Parliament on 20 October 2005. The 2005 Bill contained a substantial re-ordering of sections, and the following material changes:

- clarified the exemption for people on holidays regardless of their tenure;
- allowed children to be excluded from residing at a park in certain circumstances;
- allowed the first rent review to be undertaken earlier than six months in certain circumstances;
- extended a provision requiring all rent reviews on a market rent basis to have regard to a report by a licensed land valuer;
- provided for the establishment of a Park Liaison Committee if there are 20 or more long-stay sites on the park (even if they are not occupied);
- clarified that the Park Liaison Committee has an advisory and consultative role; and
- clarified that compensation for the termination of agreements on certain grounds related to fixed-term agreements.

The 2005 Bill received Royal Assent on 4 July 2006.

Immediately after the Bill received Royal Assent, Consumer Protection commenced the development of supporting regulations. The CIAWA and PHOA were engaged to provide formal feedback on draft regulations in May 2007. On 3 August 2007, the Residential Parks Regulations were published and the Residential Parks Act became operational.

6. Review of the implementation of the Residential Parks Act

In 2008, Consumer Protection undertook a review of the implementation of the Residential Parks Act. During the review, it became apparent that two major issues had arising following the implementation of the legislation.

Firstly, long-stay tenants who previously occupied sites under informal arrangements were required to formalise their occupancy through written agreements. In many circumstances, these residents have been offered periodic long-stay tenancy agreements rather than fixed-term agreements for an extended period. Through this process, long-stay tenants in this situation have become increasingly aware of the possibility that their agreement can be terminated without grounds.

Also, the number of suitable and available alternative sites has reduced as residential park operators consider alternative and more lucrative uses of their land due to the expansion of the urban fringe and an increase in land prices in Western Australia since 2001.

6.1 Development of policy options

Consumer Protection has received correspondence suggesting that many long-stay tenants leased sites under informal arrangements, but believed their tenure was for the term of their life. The commencement of the Act has served to crystallize that this perception was not reality. In response to the issues, Consumer Protection undertook preliminary analysis of policy options to respond to these issues (see 7.1). The preliminary analysis of the policy options took into account the constraints affecting the residential parks industry, and how those constraints are translated to the issues raised by long-stay tenants.

6.1.1 Purpose of the Residential Parks Act

The purpose of the Residential Parks Act is to:

- provide greater contractual certainty for long-stay tenants and parks operators;
- ensure that all parties understand their rights and responsibilities when entering into a long-stay agreement;
- require park operators to provide prospective tenants significant disclosure material, so that the potential resident is in a better position to be fully informed;
- mirror appropriate provisions of the Residential Tenancies Act;
- require the establishment of a Park Liaison Committee to enable long-stay tenants to assist the park operator in the development and changes to park rules and policies; and

6.1.1 Purpose of the Residential Parks Act - continued

- give parties access to a simple, cost effective, dispute resolution process through the State Administrative Tribunal.¹⁷

The Residential Parks Act focuses on the contractual relationship between park operators and tenants and is underpinned by the principles established under the Residential Tenancies Act.

The Act could not reasonably address the broader social, housing, tourism and planning issues associated with the use of caravan parks, nor was it designed to intervene in the supply, demand or use of sites.

6.1.2 Provision for fixed-term and periodic tenancy agreements

Long-stay tenants and their representatives have stated that the Residential Parks Act does not provide sufficient protection as periodic tenancy agreements were not prohibited. Under a periodic tenancy, a park operator can terminate the agreement, without reason, by providing a minimum of 180 days notice in the prescribed form to a long-stay tenant. A long-stay tenant can also terminate a periodic tenancy, without reason, by providing at least 21 days notice in the prescribed form to the park operator.

Prior to the commencement of the Residential Parks Act, the majority of relocatable home purchases and tenancy agreements were informal. Under the Residential Tenancies Act, which applied to these arrangements prior to the commencement of the Residential Parks Act, long-stay tenants who occupied sites on an informal basis were considered to be occupying the site under a periodic agreement.

Given the variety of caravan park tenancies and the intent to mirror the relevant provisions of the Residential Tenancies Act, it was determined that the Residential Parks Act should provide tenancy agreements that reflected the marketplace at that time. As a consequence, the Residential Parks Act provides for both fixed-term and periodic tenancy agreements.

The Residential Parks Act has improved the position of long-stay tenants who occupied sites under informal arrangements by:

- requiring agreements to be formalised in writing to clarify the position of long-stay tenants and park operators; and
- increasing the notice period required to terminate a long-stay agreement without reason from a minimum of 60 days to a minimum of 180 days.

In the event that the parties are yet to formalise their tenancy arrangements, the Residential Parks Act continues to regulate the tenancy to the extent that the Act can be applied.

¹⁷ Western Australia, *Parliamentary Debates* Legislative Assembly, 20 October 2005, p 6735-6738 (John Kobleke).

6.1.3 Expectation gap of long-stay tenants

Many park operators offered periodic agreements to long-stay tenants who occupied sites prior to the commencement of the Residential Parks Act reflecting the informal arrangements these parties were operating under at the time.

Residents have stated that, although they occupied sites under informal arrangements, they believed that their occupation was for life. These tenants had an expectation that after the Residential Parks Act commenced, they would be offered a fixed-term lease of a significant duration and access to compensation expenses should they be required to relocate as a result of the termination of a tenancy by the park operator.

A long-stay tenant under a fixed-term agreement is entitled to compensation for certain relocation expenses when a park operator terminates the agreement before the end of the fixed-term¹⁸. Residents under periodic agreements do not have a statutory right to seek compensation for these purposes.

As a result, long-stay tenants have stated that the Residential Parks Act has not delivered on their expectations of greater security of tenure or access to compensation for relocation expenses.

6.2 Supply-side and demand-side pressures affecting the residential parks industry

Consumer Protection has identified a number of areas that must be considered should further government intervention in the residential park industry progress.

The main driver for these pressures was the resources boom that resulted in significant economic growth in Western Australia, particularly from 2001 - 2007. This boom produced significant unpredicted growth in the State's population and resulted in an increase in the demand for private land, established dwellings and rental accommodation.

Table 6 – Economic growth in Western Australia and Australia 2001/02 -2007/08

Real Gross State/Domestic Product							
	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
Western Australia	4.0%	3.5%	7.5%	2.7%	4.9%	6.3%	5.2%
Australia	3.9%	3.9%	3.8%	2.3%	2.8%	3.2%	3.7%

Source: ABS, *Australian National Accounts* cat. no. 5220.0 and Department of Treasury and Finance *Western Australian Economic Summary 2008*.

¹⁸ Section 46, *Residential Parks (Long-stay Tenants) Act 2006 (WA)*.

6.2.1 Population growth in Western Australia

As evidenced from the tables below, since 2000, Western Australia has experienced rapid population growth as a result of inward migration and increased childbirth.

Table 7 – Australian population by State			
	2000	2007	Change
NSW	6,486,213	6,888,014	6.2%
Vic.	4,741,339	5,204,826	9.8%
Qld	3,561,537	4,181,431	17.4%
SA	1,505,038	1,584,197	5.3%
WA	1,874,459	2,106,119	12.4%
Tas.	471,409	493,371	4.7%
NT	195,561	214,929	9.9%
ACT	315,215	339,761	7.8%
Australia	19,153,380	21,015,042	9.7%

Table 8 – Population growth in Western Australia					
	2000	2002	2004	2007	Change
Births	24910	24390	24419	28608	14.8%
Net overseas migration	13993	14970	13634	25519	82.4% ¹⁹
Net interstate migration	-2187	-3582	2095	4410	301.6%
Estimated population	1,874,459	1,926,111	1,982,637	2,106,119	12.4%

Source: ABS 2008, *Australian Historical Population Statistics* cat. no. 3105.0.65.001

6.2.2 Increase in land values and property prices

As evidenced from the tables below, from 1997 – 2008, Western Australia experienced significant house and land sales activity, resulting in 275% increase in the median house price and a 231% increase in the median land price.

¹⁹ The calculation of net overseas migration (NOM) arrivals changed from 2007. For more information, refer to 3105.0.65.001 Australian Historical Population Statistics, 2008.

6.2.2 Increase in land values and property prices - continued

Table 9 - House and land sales activity and prices – Metro WA ²⁰				
Year	House Sales	Median House Price	Land Sales	Median Land Price
1997-98	23,342	\$145,000	8,895	\$69,000
1998-99	25,419	\$150,200	11,089	\$73,000
1999-00	25,946	\$160,000	9,212	\$82,000
2000-01	25,449	\$167,000	9,103	\$81,000
2001-02	30,347	\$185,000	12,269	\$85,000
2002-03	32,079	\$214,000	14,206	\$97,000
2003-04	27,469	\$250,000	12,673	\$118,000
2004-05	30,340	\$284,725	13,441	\$139,000
2005-06	33,805	\$365,000	17,879	\$174,000
2006-07	23,464	\$470,000	11,045	\$255,000
2007-08	18,663	\$480,000	7,158	\$259,000

Source: Landgate, 2009, <www.landgate.wa.gov.au>, viewed 15 April 2009.

6.2.3 The availability of public housing

Since 1997, the demand for public housing in Western Australia has increased while the number of persons housed each year has continued to decline.

Table 11 - Public housing applications accommodated and outstanding – WA		
	New applicants accommodated in public housing	Public housing applicants outstanding
1997-98	5,188	11,148
1999-00	3,938	12,891
2001-02	4,639	14,276
2003-04	4,103	13,356
2005-06	3,148	12,733
2006-07	3,127	14,571

Source: Department of Families, Housing, Community Services and Indigenous Affairs, *Housing Assistance Act 1996, Annual Report 2006-7*

Consumer Protection understands that as of November 2008, more than 19,000 eligible individuals were waiting for public housing in Western Australia. Access to public housing is a significant issue for long-stay tenants who are displaced due to a park closure.

²⁰ Not including Mandurah

6.2.4 Private rental accommodation

Since 2003, private rental accommodation has become more expensive and difficult to obtain as vacancy rates decline and median rents increase.

For example, in June 2003, the vacancy rate for rental properties in the metropolitan area was 4.5%. As at December 2008, the vacancy rate dropped to 2.4% rising from a low of 0.8% in March 2007.

In addition the median rent for a house in the metropolitan area increased from \$180 a week in June 2003 to \$370 a week in December 2008 (105% increase). The median rent for a unit in the metropolitan area increased from \$135 to \$350 a week (160% increase) over the same period.

6.2.5 Decline in the availability of sites resulting from park closures

Park operators are increasingly faced with rising operating costs while the value of the land where parks are operating, particularly in metropolitan and coastal areas, is also increasing. This has resulted in some park owners looking to use their land for more commercially rewarding purposes, including residential subdivision.

For example, in addition to the Kingsway Caravan and Tourist Park in Madeley which is currently in the process of closing, Consumer Protection has identified at least ten residential parks that may close within by 2012. Consumer Protection estimates that this represents at least 550 long-stay tenants.

6.3 Barriers in the marketplace for consumers accessing other residential parks

If a long-stay tenant is required or wishes to relocate from their current site, they are faced with significant barriers in accessing suitable alternative sites.

Given the above constraints, it is clear that consumer choice is constrained by the lack of alternative sites and the costs associated with the removal and relocation of a relocatable home. For example, Consumer Protection estimates that the costs associated with moving a relocatable home is at least \$10,000²¹.

Park operators are, therefore, in a significantly improved position when parties are undertaking negotiations to settle a long-stay tenancy agreement.

²¹ Estimate derived from anecdotal evidence provided by the Park Home Owners Association, the Caravan Industry Association and internal research.

6.4 Conclusion

The residential park industry has changed substantially since 2001 when tenancy laws to regulate the relationship between long-stay tenants and park operators were first considered. Since 2001, Western Australia has experienced:

- significant population growth;
- a 199% increase in land values since 2001-02;
- high demand and activity in the residential property market;
- significant increases in labour costs which resulted in increases in the cost of building new dwellings;
- reduction in the supply of private rental accommodation; and
- record, unmet demand for public housing.

In addition, the Western Australian residential park industry has experienced;

- a reduction in the overall number of residential parks;
- little to no investment in the establishment of new mixed-use parks, particularly in the metropolitan region and major regional centres;
- an increase in the demand for tourism sites and tourism facilities, highlighted by record sales in caravans and relocatable homes;
- an increase in the demand for long-stay sites as a result of alternative housing costs increasing and availability decreasing; and
- a reduction of the accommodation options for low-income long-stay tenants who may need to seek alternative accommodation.

7. Options to address residential parks issues

7.1 Long-term policy consideration

Should residential park living be considered an appropriate option for Western Australia's long-term housing needs, solutions to support the maintenance and growth of this niche housing sector are likely to require a "whole of government" approach.

In particular government agencies could consider:

- current policies in relation to the provision of land for residential parks;
- what effect current tourism strategies may have on the development and maintenance of residential parks;
- current policies in relation to planning to encourage the development and growth of residential parks;
- current policy in relation to public housing.

These policies must be considered in the context of the residential park industry as a whole, taking into account the drivers that are impeding the growth of the industry, the constraints consumers face from freely accessing alternative residential park sites or other housing options, and the risks associated with owning a significant chattel which is positioned on property leased from a third party.

7.2 Options to amend the Residential Parks Act

As a result of issues raised by long-stay tenants during the implementation of the Residential Parks Act, Consumer Protection has undertaken preliminary examination of policy options in order to address issues of concern to existing long-stay tenants.

After initial consideration, it was determined that these options were unviable at this time as they would not be supported by stakeholders or are likely to produce significant market distortions that may adversely affect tenants, operators or both.

Section 96 of the Residential Parks Act requires that the Minister for Commerce to arrange for a review of the operation of the Act to be carried as soon as practicable five years after the commencement of the Act. A full analysis of the policy considerations contained below is planned to be undertaken during the statutory review due in 2012.

7.2.1 Increasing minimum notice periods

The Residential Parks Act could be amended to:

- increase the minimum notice period required to be given by a park operator to terminate a periodic site-only agreement without grounds from 180 days to 12 months; and
- require that a park operator provide a minimum of 12 months notice to a long-stay tenant under a fixed-term site-only agreement if they do not wish to continue the agreement at the expiry of the fixed-term.

Benefits of adopting this proposal are that:

- the security of tenure of all long-stay tenants under site-only agreements would increase;
- the financial impost on park operators is likely to be negligible, so adopting the proposal is unlikely to trigger significant adverse market reactions including park closures; and
- long-stay tenants would receive a minimum period of 12 months to find alternative accommodation.

Some drawbacks in adopting this proposal include that:

- park operators have diminished control over their assets, because the capacity to sell the land for redevelopment is more limited, which in a broader sense may detract from the overall attractiveness of this form of investment;
- park operators may attempt to terminate periodic agreements prior to the commencement of such amendments;
- the proposal may not satisfy long-stay tenants who have lobbied for alternative proposals; and
- the proposal would not address the underlying issues of contractual certainty or the long-term decline in residential park sites.

7.2.2 Mandatory five year fixed-term agreements for existing periodic site-only tenants

The Residential Parks Act could be amended to retrospectively provide to all long-stay tenants who occupied a site under a periodic site-only agreement prior to the commencement of the Act, a mandatory five year fixed-term agreement.

Benefits of adopting this proposal include that it:

- could specifically target those long-stay tenants who were in residence prior to the commencement of the Residential Parks Act;
- provides certainty to the parties of the agreement for five years;
- would make long-stay tenants eligible for compensation if they were given notice to vacate the park for redevelopment during the five year period; and
- may make long-stay residents who are required to pay Local Government rates and charges eligible for a concession under the *Rates and Charges (Rebates and Deferments) Act 1992*.

Some drawbacks to adopting this proposal include:

- retrospective legislation is generally contentious;
- it is expected that the residential parks industry would oppose this proposal on the grounds that it would create a barrier in which they could sell the land;
- some park operators who are already contemplating sale or redevelopment may be encouraged to sell the park before being required to offer five-year fixed term agreements;
- it would create a large financial burden to those residential parks that have already decided to close or redevelop;
- the proposal may not suit all long-stay tenants under site-only agreements (including those that may need to enter aged care facilities during the five-year lease period) and it would be difficult to provide an opt-out system without compromising compliance;
- the proposal does not provide for a contingency for long-stay tenants after the fixed-term agreement expires, as their occupation would revert to a periodic tenancy.

It should be noted that under the *Commercial Tenancy (Retail Shops) Agreements Act 1985*, a landlord is required to provide a tenant a minimum five year lease term (including all options to renew the lease) when negotiating a lease for a commercial premises. However, this regulation was conceived to provide certainty to small business owners in operating and developing their businesses and does not apply to lease renewals beyond the five years the tenant occupies the commercial premises.

7.2.4 Implementing regulations modelled on the Queensland Manufactured Homes Act

As discussed in 3.2.1, the Manufactured Homes Act only applies to individuals who occupy a manufactured home that is placed on a site rented by a park operator.

Under the Manufactured Homes Act, tenancy agreements are ongoing.²² Therefore, a park operator can only terminate a tenancy agreement by mutual consent with the residential park resident or by applying to the Queensland Commercial and Consumer Tribunal for an order of termination based upon the tenant breaching the agreement or the residential park land for other purposes. In this instance, a park operator may be ordered to pay compensation to the tenant.

Under the Manufactured Homes Act, if a park owner wishes to terminate a site agreement and use the agreed premises for another purpose the park operator must gain any approval by the relevant planning authorities prior to applying to the Tribunal to terminate the agreement.

Adopting this approach would likely have the following benefits:

- the regulations would likely be supported by the PHOA as the tenancy arrangements of long-stay tenants under site-only agreements who own a manufactured home could only be terminated by mutual consent, by a long-stay tenant, or by an order of the Tribunal;
- the regulations provide for all matters regarding the termination of a site only agreement and compensation to be determined by mutual consent or the Tribunal; and
- require park operators to obtain all relevant planning approvals prior to negotiating the termination of an existing site agreement.

However, adopting the Queensland model could have significant drawbacks as:

- the proposal would unlikely be supported by the CIAWA, on the grounds that it poses significant restrictions and costs on the operation and sale of freehold land;
- park operators would be required to compensate all long-stay tenants under site-only agreements for their relocation expenses. It is likely that these future expenses would be passed on to the residents in the form of higher site rents;
- parties would have less opportunity to negotiate an agreement that suits their individual needs; and
- the proposal may encourage park operators to sell their parks prior to the legislation being amended to avoid being subject to the new laws.

²² Section 26, *Manufactured Homes (Long-stay Tenants) Act 2005*(QLD).

7.2.5 Implementing regulations modelled on the New South Wales Residential Parks Act 1998.

The Residential Parks Act could be amended to:

- prohibit park operators from terminating a fixed-term site-only agreement at the expiry of the fixed-term;
- prohibit the termination of periodic site-only agreement “without grounds”;
- provide long-stay tenants at least 12 months notice should a park operator terminate a site-only agreement due to the sale of the park or a change of use for the site and
- extend the right to access compensation to all residential park tenants under a site-only agreement.

If adopted, this proposal could have significant benefits as it:

- may provide a solution to long-stay tenants security of tenure concerns;
- encourages the maintenance of existing residential parks, by requiring a process to be followed before a park operator can terminate the agreements of residents in situ;
- provides long-stay tenants with compensation before they are required to vacate the rented premises; and
- provides clear process for termination and the payment of compensation.

Adopting a similar model to the New South Wales framework could have significant drawbacks as:

- the proposal would require park operators to compensate all long-stay tenants under a site-only agreement in the event that they terminate their agreements. If a park operator is planning on redeveloping the land in the short term, it is likely that the costs of compensation would be passed on to the residents in the form of higher rents;
- it is unclear how the implementation of this proposal would effect the current residential park industry, including whether there would be any adverse effect to the tourism industry;
- the proposal could discourage the development of new residential parks; and
- the proposal may encourage park operators to sell their parks prior to the legislation being amended to avoid being subject to the new laws.

7.3 Development of an assistance fund

Consumer Protection has undertaken an initial evaluation of the development of a fund, administered by the Government, to provide financial assistance to long-stay tenants who are displaced and required to relocate their relocatable home.

A number of policy issues must be addressed before a fund of this type could become operational, including determining:

- the source of funding (i.e. government funded; voluntary contributions by industry and/or tenants; compulsory levies);
- the agency that would administer the fund;
- how the fund would be administered;
- the amount of resources that the fund would require to ensure that is duly administered and all legitimate claims could be paid;
- the number of long-stay tenants who may be eligible to claim on the fund;
- the process in which eligible person could make a claim on the fund;
- the level of stakeholder support to the proposal;
- any issues of equity that may arise under other situations where tenants are lawfully evicted from premises and suffer loss in moving; and
- any legal issues which may need further examination (for example, applying the funding criteria to periodic long-stay tenants whose tenancy agreements are terminated at the end of the tenancy period).

It should be noted that Consumer Protection is not aware of any funds of this type operating in any other industry or in any other Australian jurisdiction. Existing compensation funds within Consumer Protection relate to licensed occupations. In these situations, payments from the funds generally arise where some form of unlawful conduct by the licensee has occurred, resulting in losses being suffered by consumers.

In addition, the key industry stakeholders, PHOA and CIAWA, have previously indicated that they do not support additional fees being charged to their memberships to establish and maintain a fund of this type.

7.4 Conclusion

During the review of the Residential Tenancies Act in 2001, it was identified that long-stay tenants enter into occupancy agreements that are different from other tenants. For example, in some circumstances, long-stay tenants provide a dwelling which they place on land leased from a park operator. The purpose of the Residential Parks Act is to regulate this unique relationship by providing improved certainty of tenure to long-stay tenants and park operators.

7.4 Conclusion - continued

The Residential Parks Act was developed through an extensive consultation process. Through that process, it was identified that long-stay tenants require significant disclosure material to assist them in making informed decisions about the suitability of residential park living.

As an outcome of the implementation of the Residential Parks Act, long-stay tenants who resided in a park before the commencement of the Act, have an increased awareness of park operators' ability to terminate periodic long-stay tenancy agreements without grounds. This has resulted in some long-stay tenants suggesting that the Residential Parks Act be amended to provide greater security of tenure for those tenants who may be adversely affected if a park operator terminated their tenancy agreement.

Given the constraints experienced in the residential parks industry from the reduction in private rental accommodation and public housing, the increase in the demand for freehold land and the popularity of caravan park tourism, policy options to address the issues raised by long-stay tenants must be considered within the broader context of the demand and supply of sites.

Simply amending the Residential Parks Act, without taking into account these constraints is unlikely to holistically address the issues raised by residential park tenants.

Furthermore, the Residential Parks Act cannot be amended without taking into account the views of those tenants under fixed-term tenancy agreements. It is possible that by focusing solely on periodic long-stay tenants, any proposed amendments may adversely affect long-stay tenants under fixed-term agreements or promote fixed-term agreements of a limited duration (i.e. six months, one year) in the marketplace.

Lastly, the policy options reviewed in sections 7.2.1 to 7.3 carry the risk of creating new and unintended consequences for long-stay tenants and park operators and other market distortions.

Section 96 of the Residential Parks Act requires the Minister for Commerce to arrange for a review of the operation of the Act to be carried as soon as practicable five years after the commencement of the Act. A full analysis of the operation of the Act will be undertaken during the statutory review due in 2012.

8. Other Issues

8.1 Lake Joondalup Lifestyle Villages – Lease Terms

In early 2004, it came to Consumer Protection's attention that the National Lifestyle Village (NLV), which operated parks called Lake Joondalup and Pine View, was issuing leases that contained a complex term clause that was marketed to residents as being "lifetime leases". The term clause created legal uncertainty about the nature of the agreement (whether a lease, licence or grant of an estate), its duration and consequently, its validity.

Consumer Protection raised its concerns with NLV that because it was not clear about whose lifetime was the reference point for the operation of the term clause, the leases might be void for uncertainty. In addition, Consumer Protection was concerned that the NLV leases were not subject to any approvals that were required to be granted by the Planning Commission.

As a result of the enquiries made by Consumer Protection, it is understood that many of the agreements were converted to a specified fixed term of 60 years prior to the commencement of the Residential Parks Act or are a freehold grant of a lifetime lease. It is Consumer Protection's view that both arrangements are fixed term agreements entered into before the commencement of the Residential Parks Act and continue to be covered by the *Residential Tenancies Act 1987*. Consumer Protection understands that NLV are offering leases that comply with the Residential Parks Act.

8.2 Energy Tariffs charged to caravan long-stay tenants

It is understood that prior to May 2004, the majority of long-stay tenants were not billed by Western Power direct but were on-sold electricity by park operators. As a result, such residents did not have access to the uniform domestic tariff or Government funded energy rebates.

In May 2002, the Minister for Energy established the Permanent Residents of Caravan Parks Electricity Supply Reference Group. The Working Group included representation from Consumer Protection, CIAWA, PHOA, Western Power and the Office of Energy.

In May 2004, the Government introduced the Power Price Equity Scheme to give long-stay tenants access to energy subsidies from July 2004. From November 2004, long-stay tenants were also given access to the uniform tariff prices regardless of the location of, or power supply arrangements on, parks. Long-stay tenants are considered "permanent" in relation to the subsidies and uniform tariff prices if the park is intended to be their principal place of residence.

8.3 Pensioners and Seniors Rebate Scheme

The Government's Pensioners and Seniors Rebate Scheme ('Rebate Scheme') that is established under the Rates and Charges (Rebates and Deferments) Act 1992 ('RCRD Act') provides concessions to pensioners and seniors on their local government rates and annual water service charges.

Currently, pensioners and seniors who occupy a site on a caravan park or residential park under a periodic long-stay agreement, or a fixed-term long-stay agreement of less than five years duration, are not eligible to receive a rebate on their local government rates and annual water service charges.

Pensioners and seniors who occupy a site on a caravan park under a fixed-term agreement of greater than five years are eligible for rebates under the Rebate Scheme.

Consumer Protection understands that the Treasurer is considering a proposal to amend the eligibility criteria of the Rebate Scheme to include long-stay tenants who occupy sites under periodic agreements and fixed-term agreements of less than five years duration.

8.4 The development of Protocols to assist agencies in responding to a park closure

An inter-agency working group, co-chaired by the Department of Housing (DOH) and the Department for Planning and Infrastructure (DPI) has been established in response to the closure of the Kingsway Caravan and Tourist Park. In addition, Consumer Protection and the Office of Seniors Interests are members of the working group.

As set out by the Minister for Commerce in Parliament on 4 December 2008, the working group has two objectives;

- the first, coordinated by DPI, is to seek to identify suitable Crown land that could be developed into caravan parks within twelve months; and
- the second, coordinated by DOH, is to develop a set of protocols to coordinate government agencies in assisting long-stay tenants in the event of a park closure.

The working group has convened and is continuing to work collaboratively to develop proposals and achieve the outcomes set out by the Minister for Commerce.