

40TH PARLIAMENT



Report 39

STANDING COMMITTEE ON LEGISLATION

Residential Parks (Long-stay Tenants) Amendment Bill 2018

Presented by
Hon Dr Sally Talbot MLC (Chair)

March 2019

Standing Committee on Legislation

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EXECUTIVE SUMMARY

- 1 The Legislative Council referred the Residential Parks (Long-stay Tenants) Amendment Bill 2018 (Bill) to the Standing Committee on Legislation (Committee) for consideration and report, with the power to inquire into policy.
- 2 The Bill makes significant amendments to the *Residential Parks (Long-stay Tenants) Act 2006* (Act). A statutory review of the Act was undertaken which made a number of recommendations around improving certainty of contract and fair dealings between park operators, existing and prospective long-stay tenants.¹
- 3 The Bill introduces the following key amendments:
 - improved disclosure obligations
 - the removal of 'without grounds' terminations of long-stay site-only agreements
 - the introduction of specific grounds for termination
 - no termination of fixed term agreements on the sale of a park
 - no automatic termination of a long-stay agreement if a park owner's financier takes possession of a residential park
 - clearer rules for park operators, home owners and prospective tenants in relation to the sale of homes
 - clearer obligations relating to the creation and enforcement of park rules
 - a minimum set of core contractual terms applying to all long-stay agreements
 - ensuring consistency with the *Residential Tenancies Act 1987*, where appropriate.
- 4 The Committee generally supports the policy behind the Bill and believes the amendments strike a good balance between the interests of tenants and park operators.
- 5 The Committee is also of the view that the retrospective application of certain transitional provisions in the Bill is justified.
- 6 The Committee has concerns regarding:
 - Henry VIII clauses
 - broad regulation-making powers
 - selected clauses highlighted in submissions.
- 7 The Committee has made findings and recommendations:
 - seeking further information from the Government
 - proposing amendments to some sections it believes will further improve the legislation
 - clarifying the operation of some provisions of the Bill to address misunderstandings on their effect on tenants and park operators.

¹ Government of Western Australia, Department of Commerce, Consumer Protection, Report, Statutory Review of the *Residential Parks (Long-stay Tenants) Act 2006*, p 6. See: <https://www.commerce.wa.gov.au/sites/default/files/atoms/files/resparksstatrevrptdec15.pdf>. Viewed 26 February 2019.

Findings and recommendations

Findings and recommendations are grouped as they appear in the text at the page number indicated:

FINDING 1

Page 11

The drafting of clause 81, proposed section 111 is difficult to understand and lacks clarity.

RECOMMENDATION 1

Page 11

The Government clarify the purpose of clause 81, proposed section 111 and, if required, provide a clearer form of words.

FINDING 2

Page 14

Notwithstanding without grounds termination for site-only agreements will no longer be possible after the commencement of the Residential Parks (Long-stay Tenants) Amendment Bill 2018, park operators will have four new grounds to terminate a long-stay agreement, along with existing grounds under the *Residential Parks (Long-stay Tenants) Act 2006*.

FINDING 3

Page 14

The retrospective application of certain transitional provisions in the Residential Parks (Long-stay Tenants) Amendment Bill is justified.

FINDING 4

Page 16

Subclause (b)(ii) of the definition of 'residential park' in clause 4, proposed section 3 constitutes an inappropriate delegation of legislative power.

RECOMMENDATION 2

Page 16

The Minister representing the Minister for Commerce explain to the Legislative Council why subclause (b)(ii) of the definition of 'residential park' in clause 4, proposed section 3 should not be deleted.

FINDING 5

Page 17

Clause 5, proposed section 5(2)(d) constitutes an inappropriate delegation of legislative power.

RECOMMENDATION 3

Page 17

The Minister representing the Minister for Commerce explain to the Legislative Council why clause 5, proposed section 5(2)(d) should not be deleted.

FINDING 6

Page 19

Clause 10, proposed section 9A is a Henry VIII clause.

RECOMMENDATION 4

Page 19

That clause 10 be opposed.

RECOMMENDATION 5

Page 19

The Minister representing the Minister for Commerce advise the Legislative Council of amendments to the Residential Parks (Long-stay Tenants) Amendment Bill 2018 to address the matters set out in paragraph 7.29 of this report.

RECOMMENDATION 6

Page 21

Clause 19, proposed section 20A(1) be amended as follows:

Page 24, line 26 — To insert after “that”:

is reasonably likely to occur and

FINDING 7

Page 21

The Department of Mines, Industry Regulation and Safety intends that the cost of replacement keys or security devices for residential parks will be a prescribed fee under regulations pursuant to clause 15, proposed section 12(1)(e) of the *Residential Parks (Long-stay Tenants) Bill 2018*.

RECOMMENDATION 7

Page 22

The Minister representing the Minister for Commerce confirm that the cost of replacement keys or security devices will be included as a prescribed fee under regulations pursuant to clause 15, proposed section 12(1)(e) of the Residential Parks (Long-stay Tenants) Bill 2018.

FINDING 8

Page 23

The Department of Mines, Industry Regulation and Safety has undertaken that a park operator would not be prosecuted under clause 29, proposed section 32H of the *Residential Parks (Long-stay Tenants) Amendment Bill 2018* if they change locks to shared premises for health and safety reasons.

RECOMMENDATION 8

Page 23

The Residential Parks (Long-stay Tenants) Amendment Bill 2018 be amended to provide a defence from prosecution where the locks to shared premises are changed for health and safety reasons.

The Minister representing the Minister for Commerce address the concerns raised in relation to the extent to which sections 29B and 29C of the *Rates and Charges (Rebates and Deferments) Act 1992* are utilised in the residential parks sector.

FINDING 9

Page 25

Tenants on periodic agreements will be able to seek an order from the State Administrative Tribunal about the amount of rent payable under an agreement.

FINDING 10

Page 25

The ability for a person who is occupying premises to apply to the State Administrative Tribunal to be recognised as a long-stay tenant in respect of agreed premises under clause 59, proposed section 63C of the Residential Parks (Long-stay Tenants) Amendment Bill 2018 will apply from the commencement day to all existing as well as new long-stay agreements.

RECOMMENDATION 10

Page 27

Clause 66, proposed section 71A be amended as follows:

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 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.

FINDING 11

Page 29

Clause 81, proposed section 115(2) is a Henry VIII clause.

RECOMMENDATION 11

Page 30

Clause 81, proposed section 115 be amended as follows:

Page 119, lines 20 to 24 – To delete the lines.

Page 119, line 25 – To delete "(1) or (2)," and insert:

(1),

RECOMMENDATION 12

Page 30

The Minister representing the Minister for Commerce advise the Legislative Council of any amendments to the Residential Parks (Long-stay Tenants) Amendment Bill 2018 necessary to validate voluntary sharing arrangements in pre-commencement agreements notwithstanding that the requirements of the *Residential Parks (Long-stay Tenants) Act 2006* have not been complied with as referred to in paragraph 7.83 of this report.

1 Referral and procedure

1.1 On 12 February 2019, the Legislative Council referred the Residential Parks (Long-stay Tenants) Amendment Bill 2018 (Bill) to the Standing Committee on Legislation (Committee).

1.2 The motion of referral read as follows:

- (1) That the Residential Parks (Long-stay Tenants) Amendment Bill 2018 be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 21 March 2019; and
- (2) that the committee has the power to inquire into and report on the policy of the bill.²

1.3 The Committee called for submissions from the stakeholders listed in Appendix 1 and advertised the inquiry in *The West Australian*. Four submissions were received.

1.4 Public hearings were held with:

- Park Home Owners Association WA Inc (PHOAWA)
- Caravan Industry Association of Western Australia (CIAWA)
- Department of Mines, Industry Regulation and Safety (DMIRS).

1.5 The Committee thanks everyone who took the time to provide the Committee with their views within the short timeframe for the inquiry.

1.6 In particular, the Committee thanks DMIRS, CIAWA and PHOAWA for their assistance. The early receipt of submissions from CIAWA and PHOAWA enabled the Committee to obtain DMIRS's feedback on them. This greatly assisted the Committee in understanding their positions on the Bill, bearing in mind the short inquiry timeframe.

2 Committee approach

2.1 Having been given the power to inquire into the policy of the Bill, the Committee has considered whether the proposed amendments to the *Residential Parks (Long-stay Tenants) Act 2006* (Act) are justified in ensuring fairness to park operators and existing and prospective long-stay tenants.

2.2 The Committee has also assessed the amendments proposed by those who made submissions against the same criteria, including 15 amendments proposed by CIAWA.

2.3 As with previous inquiries, the Committee's method for scrutinising the Bill included an assessment as to whether its provisions are consistent with Fundamental Legislative Principles (FLPs). Sixteen FLPs are set out in Appendix 2.

2.4 Whilst consideration or application of FLPs is not mandatory in Western Australia, the Committee has used them as a framework for fair and effective scrutiny of legislation since 2004.

2.5 Due to the short timeframe for this inquiry, this report focusses on clauses which were of concern to the Committee as well as proposed sections of the Bill it wishes to draw attention to, following its review of the evidence.

² Hon Sue Ellery MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 12 February 2019, p 31.

- 2.6 The Committee has also sought to clarify the operation of the Bill and how it affects tenants and park operators to address misunderstandings about the effect of some provisions identified in the evidence it received.

3 Policy and purpose of the Bill

Policy of the Bill

- 3.1 The second reading speech gives the following summary of the policy of the Bill:

A comprehensive consultation and review process has been undertaken resulting in a package of reforms aimed at improving certainty of contract and promoting fair dealing in relation to residential park tenancies in Western Australia.

The amendments in the Bill aim to balance the interests of both operators and tenants while continuing to support the viability of the industry.³

- 3.2 DMIRS has also described the policy of the Bill as:

to provide greater protections and security of contract for residential park tenants, while supporting park operators to maintain existing residential parks and create a sustainable housing option for the community.⁴

- 3.3 In its submission, DMIRS refers to certainty of contract and fair dealings between the parties as fundamental objectives which have guided the development of the Bill.⁵ These objectives underpin the policy and many of the amendments the Bill proposes, which DMIRS states represent a balance between the interests of tenants and park operators.⁶

- 3.4 Subject to concerns about selected clauses of the Bill discussed in section 7, the Committee supports the policy of the Bill and is of the view that it strikes a good balance between the interests of tenants and park operators.

Purpose of the Bill

- 3.5 The second reading speech describes the purpose of the Bill as amending the Act to implement the recommendations of a statutory review of the Act.⁷ The recommendations are aimed at improving certainty of contract⁸ and fair dealings between the parties.

- 3.6 In his foreword to DMIRS's submission, the Director-General provides the following information on the purpose of the Bill:

The amendments in the Bill aim to balance the interests of both operators and tenants while continuing to support the viability of the industry. Wherever possible, the potential costs burden on park operators has been minimised. At the

³ Hon Alannah MacTiernan MLC, Minister Representing the Minister for Commerce, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 27 November 2018, pp 8671-2.

⁴ Answers to written questions tabled at hearing held with DMIRS on 1 March 2019, p 1.

⁵ Submission 3 from DMIRS, 27 February 2019, p 10.

⁶ *ibid.*, p 9.

⁷ Hon Alannah MacTiernan MLC, Minister Representing the Minister for Commerce, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 27 November 2018, p 8671.

⁸ *ibid.* See also Residential Parks (Long-stay Tenants) Amendment Bill 2018, *Explanatory Memorandum*, Legislative Council, p 1.

same time, the amendments recognise that residents of residential parks are often older, vulnerable consumers who require certain protections.⁹

3.7 Set out below in Figure 1 is a diagram provided by DMIRS detailing the proposals in the Bill aimed at improving certainty of contract and fair dealings between the parties.

ATTACHMENT A - RESIDENTIAL PARKS (LONG-STAY TENANTS) AMENDMENT BILL

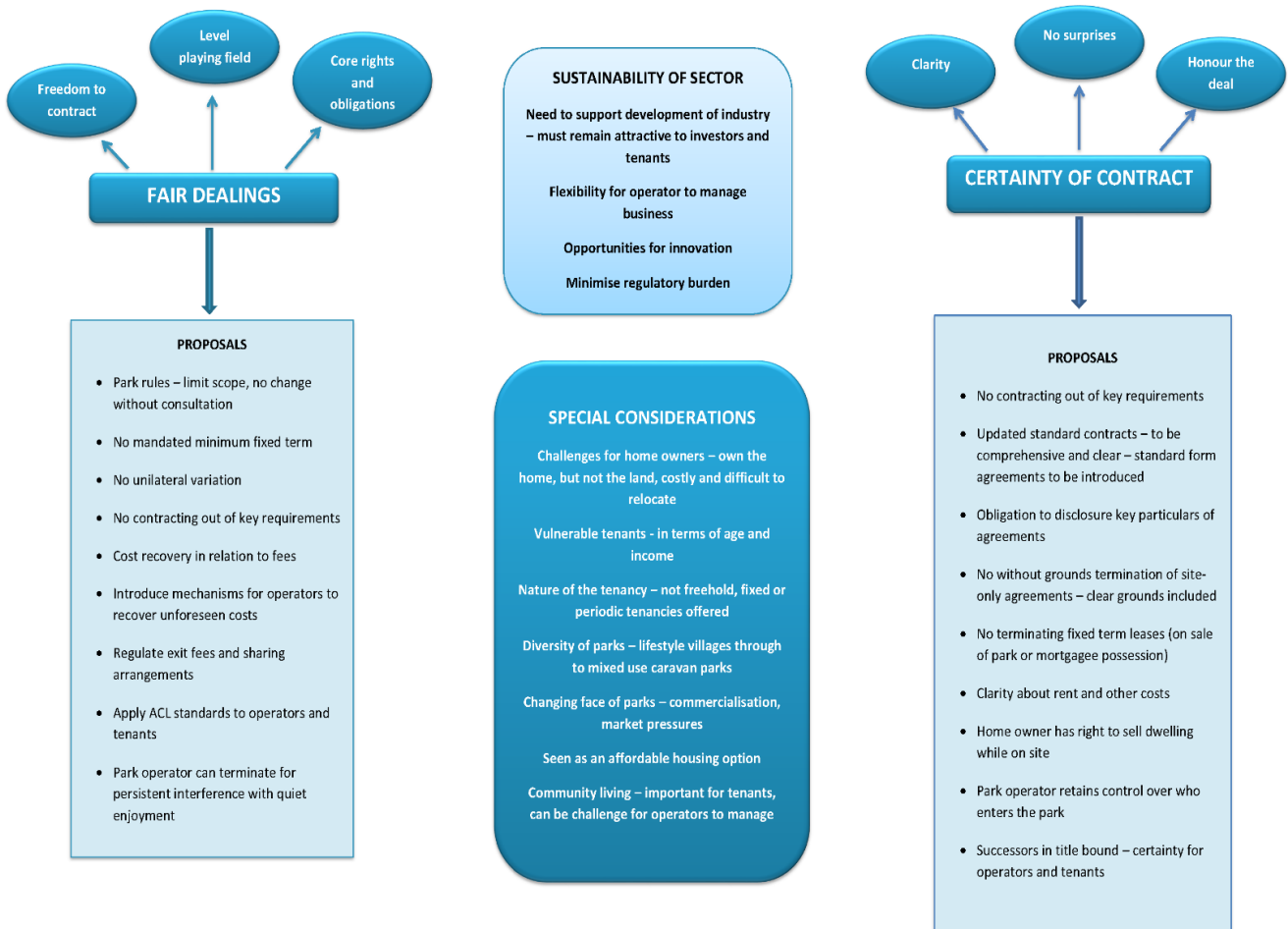


Figure 1. Diagram detailing proposals in the Bill improving certainty of contract and fair dealings [Source: Attachment A to answers to written questions tabled at hearing held with DMIRS on 1 March 2019]

⁹ Submission 3 from DMIRS, 27 February 2019, foreword. See also Hon Alannah MacTiernan MLC, Minister Representing the Minister for Commerce, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 27 November 2018, p 8672 and Penny Lipscombe, Director, Legislation and Policy, DMIRS, *Transcript of evidence*, 1 March 2019, p 2.

4 Background

Residential park

- 4.1 A residential park provides sites for rent on which relocatable homes can be placed. Tenants either:
- rent both a site and a home, which is covered by an on-site home agreement, or
 - rent a site only and own the home, which is covered by a site-only agreement.¹⁰
- 4.2 Agreements can be periodic or for a fixed term.¹¹

Legislation

- 4.3 The intent of the Act is to provide greater certainty of tenure for long-term residents of caravan parks and park operators while supporting development of new residential parks. It also mirrors relevant provisions of the *Residential Tenancies Act 1987* and gives parties access to the State Administrative Tribunal (SAT) to resolve disputes.
- 4.4 The Act:
- 4.4.1 applies to site-only and on-site home agreements of three months or longer
 - 4.4.2 compliments and is often read with the *Caravan Parks and Camping Grounds Act 1995*, which regulates infrastructure within caravan parks
 - 4.4.3 deals with the form and content of long-stay agreements, pre-contractual disclosure, rent and other fees and charges, community aspects of park living, termination and dispute resolution.

Inquiry by the Economics and Industry Standing Committee

- 4.5 In October 2009 the Economics and Industry Standing Committee (EISC) tabled its report entitled, 'Provision, Use and Regulation of Caravan Parks (and Camping Grounds) in Western Australia' in the Legislative Assembly.¹² The report is predominately focused on the tourism aspects of caravan and camping sites and the supply pressures placed onto camping grounds by urban encroachment, long-stay residents and government fees and charges.
- 4.6 The EISC found the Act had generally not been well received by either caravan park operators or long-stay tenants.¹³ Tenants considered that the Act had lessened rather than increased protections afforded to them while park operators believed the Act offered too much protection to the tenant.¹⁴ Major issues of contention included:
- Security of tenure: while the Act required agreements to be formalised in writing to clarify the position of tenants, it was perceived that existing tenants had no greater security of tenure than existed prior to the Act.¹⁵

¹⁰ Submission 3 from DMIRS, 27 February 2019, p 1.

¹¹ Amanda Blackwell, Legal Policy Officer, DMIRS, *Transcript of evidence*, 1 March 2019, p 16.

¹² Western Australia, Legislative Assembly, Economics and Industry Standing Committee, Report 2, 38th Parliament, *Provision, Use and Regulation of Caravan Parks (and Camping Grounds) in Western Australia*, 15 October 2009. See also Submission 3 from DMIRS, 27 February 2019, p 1.

¹³ Western Australia, Legislative Assembly, Economics and Industry Standing Committee, Report 2, 38th Parliament, *Provision, Use and Regulation of Caravan Parks (and Camping Grounds) in Western Australia*, 15 October 2009, p 327.

¹⁴ *ibid.*, p 325.

¹⁵ *ibid.*, p 330.

- Without grounds termination: tenants were concerned that 60 or 180 days' notice was not sufficient and they should not be required to relocate without reason or compensation.¹⁶ Park operators argued that it is too difficult to evict 'problem tenants'.¹⁷
- The marketing and sale of park homes and caravans: in particular, issues where tenants sell their property to buyers who have not been adequately advised of the terms of the lease of the site.¹⁸

Statutory review of the *Residential Parks (Long-stay Tenants) Act 2006*

- 4.7 In accordance with section 96 of the Act, which required the Minister to review the Act within five years of its operation, in August 2012 the then Department of Commerce (Department) commenced a statutory review.¹⁹
- 4.8 The purpose of the statutory review was to:
- 4.8.1 identify provisions of the Act which may not be operating as intended
 - 4.8.2 ensure that any proposals for reform meet community expectations in promoting fair trading practices, particularly given that many residents are vulnerable due to their age and financial circumstances
 - 4.8.3 identify what changes, if any, need to be made to the Act.²⁰
- 4.9 DMIRS advised that as part of the statutory review extensive stakeholder consultation was undertaken.²¹

Consultation discussion paper

- 4.10 The Department initiated the statutory review process by releasing a consultation discussion paper in August 2012, which identified the following nine priority areas for reform:
- security of tenure, including without grounds termination and owner initiated sale of park
 - compensation
 - disclosure
 - rent variation
 - fees and charges
 - sale of homes on-site
 - dispute resolution
 - park liaison committees

¹⁶ *ibid.*, p 336.

¹⁷ *ibid.*, p 337.

¹⁸ *ibid.*, pp 338-42. The EISC made findings rather than recommendations at the end of the relevant sections referred to above and the Government response did not make any references to the forthcoming statutory review of the Act. See Tabled Paper 2134, Legislative Assembly, 25 May 2010.

¹⁹ Submission 3 from DMIRS, 27 February 2019, p 3.

²⁰ Government of Western Australia, Department of Commerce, Consumer Protection, Report, Statutory Review of the *Residential Parks (Long-stay Tenants) Act 2006*, p 6. See: <https://www.commerce.wa.gov.au/sites/default/files/atoms/files/resparksstatrevrptdec15.pdf>. Viewed 26 February 2019.

²¹ Submission 3 from DMIRS, 27 February 2019, pp 22-23 contains a summary of the statutory review process for the Act.

- maintenance and capital replacement.²²

4.11 The discussion paper contains a summary of the background behind each of the nine priority areas and was released for a three month consultation period, inviting submissions as well as responses to a number of survey questions.

Consultation Regulatory Impact Statement

4.12 In June 2014 the Department released a *Consultation Regulatory Impact Statement (C-RIS)*, which examined the issues considered under a regulatory impact framework and presented possible options for reform. Extensive consultation was undertaken with industry groups and tenants with a range of public forums held.²³

Statutory review report

4.13 In December 2015 DMIRS completed a statutory review report, which was tabled in Parliament.²⁴

4.14 This report considered a number of reform areas. In doing so it undertook an analysis of the issues, the position in other jurisdictions, the impacts on stakeholder groups of each proposal in the C-RIS and the preferred option going forward. This included whether the status quo should be maintained or whether the Act should be amended.

4.15 The report contains 48 recommendations, to be implemented by amendments to the Act, the regulations or via community education. These are set out in Appendix 3.

Decision Regulatory Impact Statement

4.16 After receiving feedback on the statutory review report, the Department prepared a *Decision Regulatory Impact Statement* in March 2017.²⁵ This document sets out the Government's final position in relation to amendments to the Act and outlines the regulatory impacts of the changes. It addresses the same priority areas identified in the consultation discussion paper, with the addition of:

- 4.16.1 contracting out
- 4.16.2 park rules
- 4.16.3 death of a tenant
- 4.16.4 park operator conduct.

²² Government of Western Australia, Department of Commerce, Consultation Discussion Paper, Statutory review of the *Residential Parks (Long-stay Tenants) Act 2006*. See: <https://www.commerce.wa.gov.au/sites/default/files/atoms/files/conresiparkslongstaytenantsaug2012.pdf>. Viewed 26 February 2019.

²³ Government of Western Australia, Department of Commerce, Consumer Protection, Report, Statutory Review of the *Residential Parks (Long-stay Tenants) Act 2006*, p 6. See: <https://www.commerce.wa.gov.au/sites/default/files/atoms/files/resparkstatrevrptdec15.pdf>. Viewed 26 February 2019.

²⁴ Tabled Paper 3754, Legislative Council, 16 February 2016. See also Amanda Blackwell, Legal Policy Officer, DMIRS, *Transcript of evidence*, 1 March 2019, p 5.

²⁵ Government of Western Australia, Department of Commerce, Consumer Protection, Consultation, *Decision Regulatory Impact Statement, Statutory review of the Residential Parks (Long-stay Tenants) Act 2006*. See: <https://www.commerce.wa.gov.au/sites/default/files/atoms/files/drisresiparks2017.pdf>. Viewed 26 February 2019.

Consultation on the drafting of the Bill

- 4.17 In its submission, DMIRS provides the following information on consultation:
- 4.17.1 During the drafting of the Bill continued consultation was undertaken with the key representative bodies of both park operators and tenants to ensure:
- the proposed provisions met the objectives of the recommendations in the statutory review report
 - there are no unintended consequences.
- 4.17.2 Half-day workshops were held on key issues to be included in the Bill with PHOAWA and CIAWA.
- 4.17.3 Consultation was also undertaken with other government agencies such as the Department of Planning, Lands and Heritage and the Small Business Development Corporation.²⁶
- 4.18 The Committee notes that CIAWA does not consider that they were consulted during the drafting of the Bill although they provided evidence of extensive consultations that took place prior to the drafting of the Bill.²⁷

5 Matters left to be prescribed in the regulations

- 5.1 The Committee notes amendments proposed by the Bill leave a significant number of matters that may or will be subsequently prescribed in the regulations, which are yet to be drafted.²⁸
- 5.2 Some of the matters left to be prescribed are:
- 5.2.1 A residential park does not include a prescribed place or class of place (proposed subsection (b)(ii) to the definition of residential park).
- 5.2.2 An agreement is not a long-stay agreement if it is a prescribed agreement or class of agreement (proposed section 5(2)(d)).
- 5.2.3 The regulations may modify the application of a provision of the Act to a long-stay agreement or class of long-stay agreement or a residential park or class of residential park (proposed section 9A).²⁹
- 5.2.4 A long-stay agreement must make provision for any prescribed information or other matter (proposed section 10(1)(d)).
- 5.2.5 A standard-form long-stay agreement may be prescribed (proposed section 10A).
- 5.2.6 A non-standard term must not be a type of term prescribed as a prohibited term (proposed section 10B(2)(b)).
- 5.2.7 A non-standard term must not be inconsistent with a standard-form long-stay agreement that is prescribed under section 10A(1) (proposed section 10B(2)(c)).

²⁶ Submission 3 from DMIRS, 27 February 2019, p 23. See also Amanda Blackwell, Legal Policy Officer, DMIRS, *Transcript of evidence*, 1 March 2019, p 5 and DMIRS, Answer to question on notice 1 asked at hearing held 1 March 2019, p 1 and Attachments 1 and 2.

²⁷ Dale Wood, Vice President, Parks, CIAWA, *Transcript of evidence*, 1 March 2019, p 3.

²⁸ Answers to written questions tabled at hearing held with DMIRS on 1 March 2019, p 1. See also Amanda Blackwell, Legal Policy Officer, DMIRS, *Transcript of evidence*, 1 March 2019, p 6.

²⁹ See the discussion of this provision in section 7.

- 5.2.8 The regulations may prescribe a term as a term that must be included in a long-stay agreement (proposed section 10B(4)).
- 5.2.9 Required documents that must be given to a person before entering into a long-stay agreement can include any other prescribed document (proposed section 11(1)(e)).
- 5.2.10 A park operator must not require or receive from a long-stay tenant, or prospective long-stay tenant, any payment in relation to a long-stay agreement other than a payment for an amount for a fee if the type of fee is prescribed as a fee that a park operator may charge (proposed section 12(1)(e)).
- 5.2.11 A term of a long-stay agreement that includes a voluntary sharing arrangement has no effect unless the park operator gives, in the prescribed manner, to the person intending to enter into the agreement a document in the approved form (proposed section 13A(2)(b)(i)).
- 5.2.12 A park operator must pay a long-stay tenant compensation for reasonable financial loss as a result of being required to relocate from the site the tenant is currently occupying to another site, including any prescribed matter (proposed section 32A(1)(f)).
- 5.2.13 A park operator must give a long-stay tenant a written notice (stating whether they intend to renew or extend a fixed term long-stay agreement or enter into a new long-stay agreement, together with its terms and conditions) within the prescribed time frame (proposed section 32R(3)).
- 5.2.14 Division 6 (abandoned goods) applies to goods other than prescribed goods (proposed section 47A(b)).
- 5.2.15 The regulations may prescribe the manner in which a park operator must make or alter the park rules (proposed section 54C(2)).
- 5.2.16 A long-stay tenant may appoint a park operator or another person as a selling agent in relation to the sale of a relocatable home only if the selling agency agreement complies with any prescribed requirements for selling agency agreements (proposed section 57(1)(b)).
- 5.2.17 Incidental expenses of a selling agent includes prescribed expenses (proposed section 57A(1)(b)).
- 5.2.18 The regulations may prescribe the manner in which a vote must be held under 59(1)(b) (where a majority of the long-stay tenants in the park vote to ask the operator to form a park liaison committee) (proposed section 59(1A)).
- 5.2.19 The regulations may prescribe the manner in which the members of a park liaison committee that represent long-stay tenants must be chosen (proposed section 60(3)).
- 5.2.20 A document required or permitted to be given under the Act may be given by electronic means in accordance with the regulations if the parties have agreed or in other circumstances set out in the regulations (proposed section 91(1)(c)).
- 5.2.21 Where a document required or permitted to be given under the Act cannot be given under proposed section 91(1), a document is taken to have been given to the person if the document is made publicly available in the manner prescribed, including making the document available on a website (proposed section 91(3)(c)).
- 5.2.22 Transitional regulations may be made, which may provide that specified provisions of the Act do not apply in relation to any matter or apply with modifications

specified in the regulations to or in relation to any matter (proposed section 115(2)).³⁰

- 5.3 DMIRS has provided a preliminary analysis of the matters it anticipates will be prescribed in the regulations, which is set out in Appendix 4.
- 5.4 DMIRS also confirmed it will consult with CIAWA and PHOAWA during the drafting of the regulations.³¹
- 5.5 While the Committee is satisfied that most of the matters set out in paragraph 5.2 are of a type which are appropriate to be dealt with in the regulations, it has provided commentary in section 7 on some broad regulation-making powers which may constitute inappropriate delegations of legislative power.

6 Retrospectivity of transitional clauses

- 6.1 The Bill contains a number of transitional arrangements.
- 6.2 In its submission, DMIRS provided a table setting out the main transitional arrangements under the Bill. See Figure 2:

Appendix B – Transitional arrangements

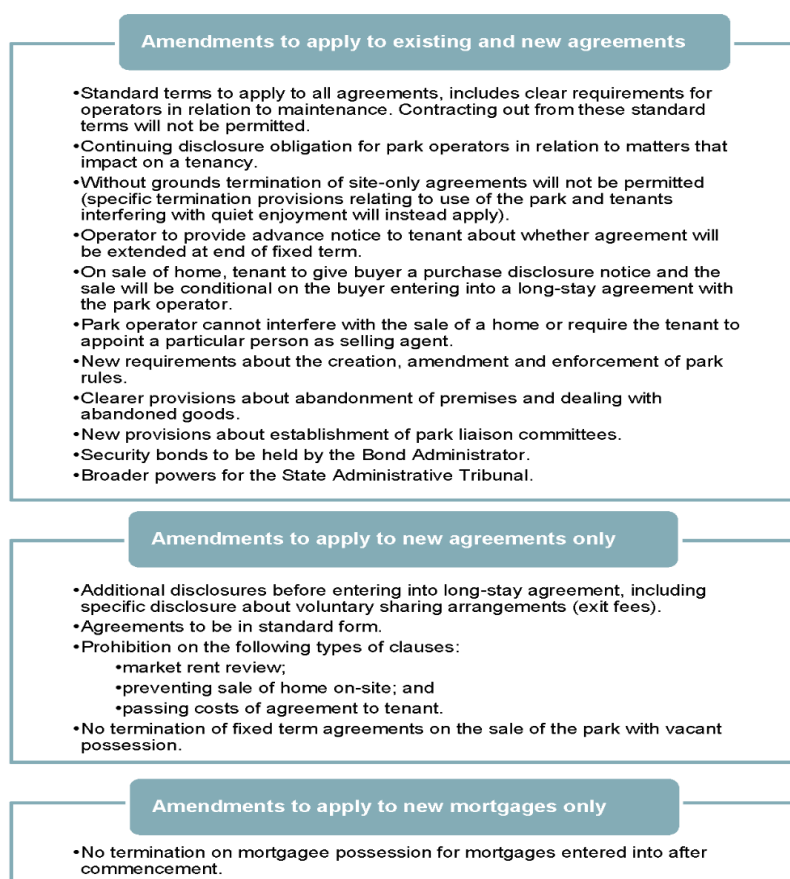


Figure 2. *Summary of transitional provisions in the Bill*
[Source: Appendix B to Submission 3 from DMIRS, 27 February 2019]

³⁰ See the discussion of this provision in section 7.

³¹ Amanda Blackwell, Legal Policy Officer, DMIRS, *Transcript of evidence*, 1 March 2019, p 6. See also John Wood, Board Member, CIAWA and Greg Wheatley, Director, MPH Lawyers, *Transcript of evidence*, 1 March 2019, p 14, where it was stated CIAWA had yet to be advised whether they will be consulted on the regulations and that they had not previously been consulted about the existing regulations under the Act.

- 6.3 DMIRS advised the Committee of the general principles it adopted regarding the application of provisions to new, or existing and new, agreements:

Prospective obligations: As a general policy, any new obligations which require park operators or tenants to do something going forward or ongoing, will apply to all agreements, existing or new.³²

Contractual rights and obligations: As a general approach, any new provision (other than the standard terms) which would have the effect of altering the contractual rights and obligations of the parties under their long-stay agreement, will only apply to new agreements entered into after the amendments commence.³³

- 6.4 DMIRS highlighted the following two clear exceptions to these general principles, being the application of standard terms to all long-stay agreements and changes to the application of termination without grounds to site-only agreements.

Application of standard terms to all long-stay agreements

- 6.5 Clause 81, proposed section 108(1) states:

Part 2 Division 5 applies to a pre-commencement long-stay agreement as if the agreement was made on commencement day.

- 6.6 Part 2 Division 5 of the Bill outlines a number of terms, regarded by DMIRS as standard terms³⁴ and included in all long-stay agreements, to protect park owners and tenants. These include terms covering vacant possession; quiet enjoyment; rights of entry; locks and security and removing fixtures and fittings.

- 6.7 These protections are currently contained in Schedule 1 of the Act, which parties may contract out of.

- 6.8 Proposed section 108(2) provides that a term of a pre-commencement long-stay agreement that excludes statutory protections contained in (the repealed) Schedule 1 is void.

- 6.9 The following justification for the retrospective imposition of these standard terms into existing agreements was provided by DMIRS:

There is a set of standard terms that should apply to all agreements. They include things like the right to vacant possession, the maintenance obligations of the park operator and tenant—things like that. They can currently be contracted out or varied. That will be amended so there will no longer be any contracting out. Those standard terms that are included in the legislation will apply to all existing agreements and new agreements. That approach is being adopted to ensure that all agreements have that core set of rights and obligations.³⁵

No termination without grounds of site-only agreements

- 6.10 Clause 41, proposed amended section 42 of the Bill provides for termination without grounds of on-site home agreements. It is silent on termination without grounds for site-only agreements.

³² Submission 3 from DMIRS, 27 February 2019 p 19.

³³ *ibid.*, p 20. See also DMIRS response to PHOAWA submission, p 1.

³⁴ Residential Park (Long-stay Tenants) Amendment Bill 2018, *Explanatory Memorandum*, Legislative Council, p 13.

³⁵ Amanda Blackwell, Legal Policy Officer, DMIRS, *Transcript of evidence*, 1 March 2019, p 17.

6.11 Clause 81, proposed section 111 states:

Amended section 42 applies to site-only agreements entered into before commencement day as if the agreement was made on the commencement day.

6.12 This provision extends the prohibition on termination without grounds for site-only agreements retrospectively to all existing agreements entered into before commencement day. This was highlighted by DMIRS:

In relation to termination—the without grounds termination provisions that we were just talking about—the prohibition on the without grounds termination will apply from the commencement date to all site-only agreements, including those periodic agreements that tenants have already entered into.³⁶

Drafting of clause 81, proposed section 111

6.13 The Committee has concerns with the clarity of the drafting of proposed section 111 (FLP 11 in Appendix 2).

6.14 The lack of clarity arises because:

6.14.1 proposed amended section 42 is silent on site-only agreements and only refers to on-site home agreements

6.14.2 proposed section 111 applies amended section 42 to existing agreements by way of it not providing for termination without grounds for site-only agreements.

6.15 The Committee is of the view that this drafting, while strictly legally correct, is overly complex and difficult to understand.

FINDING 1

The drafting of clause 81, proposed section 111 is difficult to understand and lacks clarity.

RECOMMENDATION 1

The Government clarify the purpose of clause 81, proposed section 111 and, if required, provide a clearer form of words.

Evidence received

6.16 There were differing views expressed by PHOAWA and CIAWA on the retrospective application of some transitional clauses.

6.17 PHOAWA was of the view amendments applying to agreements entered into after the commencement of the Bill should be retrospective and apply to all leases, including periodic leases and that:

Having new leases that comply with the Act and old leases that don't, creates two classes of homeowners, which can cause problems.³⁷

6.18 CIAWA articulated the issues raised by the retrospective application of legislation in relation to certainty of contract:

I think a likely result and the thing that concerns the association's members is more the notion that if the new provisions are going to be applied unilaterally to

³⁶ *ibid.*

³⁷ Submission 2 from PHOAWA, 1 March 2019, p 8. See also Nada Bond, Assistant Secretary, PHOAWA, *Transcript of evidence*, 1 March 2019, pp 2-3.

everyone, then all the members have to right now think about what that is going to mean for their individual park, and it may actually have a negative effect in saying, "I'm not sure I really want to be up for that, so I'm going to get rid of everyone right now", whereas I think if the situation is just left as is, realistically nothing is going to happen that was not going to happen and cannot still happen.³⁸

6.19 For the most part, the evidence submitted to the Committee on transitional provisions focused on the question of whether without grounds termination of periodic leases should be removed for site-only agreements. This is an issue that PHOAWA and CIAWA have entirely opposing views on.

6.20 PHOAWA said that they were satisfied with the Bill's removal of without grounds termination from all site-only agreements. They stated further:

That is one on which we feel strongly. We do not want this reinstated. It is a great concern to our members. This was part of the draconian legislation, as far as we see it, from the days when park home owners really had no rights at all. We do not see that there is any need for that.³⁹

6.21 The Committee heard evidence of the financial impact of the termination of a site-only tenancy on tenants:

If can you [sic] afford to move your home, which is constructed around an old van, which may or may not even be moveable, that all costs you anywhere between \$14 000 and \$40 000 to move, which really is not financially viable.⁴⁰

6.22 CIAWA submitted:

We consider park operators and long-stay tenants should have an equal ability to terminate without grounds, as is usual for periodic tenancies of this nature, rather than periodic leases being one-way in favour of the tenant.⁴¹

6.23 DMIRS expressed the view that:

This is a key amendment proposed by the Bill and provides greater certainty and fairness to tenant [sic].

The right of a tenant to terminate without grounds will be retained. This gives tenants the flexibility to respond to any changes in their life circumstances and make a decision about where they wish to live.⁴²

6.24 DMIRS also highlighted that a number of proposed sections of the Act will provide new grounds for a park operator to terminate a periodic tenancy, rather than through the use of without grounds termination, including that:

6.24.1 the park is to be closed or redeveloped (proposed section 41A)

6.24.2 the site is required to undertake works (proposed section 41B)

6.24.3 the long-stay site is to be used for a different purpose (proposed section 41C)

³⁸ Greg Wheatley, Director, MPH Lawyers, *Transcript of evidence*, 1 March 2019, p 20.

³⁹ Nada Bond, Assistant Secretary, Park Home Owners Association of WA, *Transcript of evidence*, 1 March 2019, p 10.

⁴⁰ *ibid.*, p 5.

⁴¹ Submission 1 from CIAWA, 20 February 2019, pp 18-19. See also Submission 4 from Shelter WA, 28 February 2019, p 3.

⁴² DMIRS response to CIAWA submission, p 5.

- 6.24.4 the tenant has repeatedly interfered with the quiet enjoyment of the park by other tenants (proposed section 71A).⁴³

Committee's views on the retrospectivity of transitional clauses

General principles on retrospectivity

- 6.25 Retrospective laws offend against the general principle that legislation intended to regulate human conduct ought to deal with future acts and ought not to change the character of past transactions carried out upon the faith of the then existing law.⁴⁴
- 6.26 The classic statement regarding retrospective legislation was enunciated by Dixon CJ in *Maxwell v Murphy*:
- The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the past events.⁴⁵
- 6.27 There is a presumption that Parliament intends all statutes, except those which are declaratory or related to matters of procedure, to operate prospectively and not retrospectively unless the language used plainly manifests in express terms or by clear implication, a contrary intention.⁴⁶
- 6.28 This principle is captured in FLP 7, which asks:
- Does the Bill adversely affect rights or liberties, or impose obligations, retrospectively?⁴⁷

Committee comment

- 6.29 The Committee recognises that DMIRS has given careful consideration to the retrospective application of provisions of the Bill and has provided a clear rationale for the transitional provisions.
- 6.30 The Committee notes the extensive consultation undertaken on this initiative as part of the statutory review of the Act and the views expressed by the submitters.⁴⁸ This may have had a significant influence on the narrowing of the issues where stakeholders are at opposing views as to retrospectivity.
- 6.31 The Committee is of the view that there must be a strong justification for the implementation of a retrospective provision. In this case, that is a provision that will fundamentally alter the nature of the transaction entered into between two contracting parties.
- 6.32 The Committee is persuaded by DMIRS's views on the retrospective application of standard terms into all agreements, particularly as they relate to a core set of rights and obligations to ensure these apply to all park owners and tenants. The Committee notes that this change

⁴³ *ibid.*

⁴⁴ GC Thornton, *Legislative Drafting*, London, Butterworths, 1996, p 117.

⁴⁵ (1957) 96 CLR 261 at 267.

⁴⁶ Western Australia, Legislative Council, Standing Committee on Legislation, Report 30, *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015*, 10 November 2015, pp 51-2.

⁴⁷ See Appendix 2.

⁴⁸ Submission 1 from CIAWA, 20 February 2019, pp 18-19; Submission 4 from Shelter WA, 28 February 2019, p 3.

was not of such significance as to be included in the 15 recommended amendments suggested by CIAWA.

- 6.33 The Committee recognises the retrospective application of the prohibition on termination without grounds for site-only agreements is a significant change to the legislative scheme. This change will significantly alter the nature of the transaction entered into by the contracting parties.
- 6.34 The Committee notes the strong position taken by PHOAWA and DMIRS on this issue in that it is a fundamental aspect of the reform. By comparison, submissions by CIAWA focus on the need for balance through without grounds termination rather than the detrimental impact that the proposed amendment will have on park operators.
- 6.35 While without grounds termination of site-only agreements will no longer be possible for park operators, the Committee finds that park operators will have four new grounds to terminate a long-stay agreement, along with the existing grounds under the Act. The Committee also recognises the significant financial impact of termination on a site-only tenant.

FINDING 2

Notwithstanding without grounds termination for site-only agreements will no longer be possible after the commencement of the Residential Parks (Long-stay Tenants) Amendment Bill 2018, park operators will have four new grounds to terminate a long-stay agreement, along with existing grounds under the *Residential Parks (Long-stay Tenants) Act 2006*.

- 6.36 The nature of a periodic lease is that it is in place until a party takes an action to terminate it. If without grounds termination is not retrospectively removed from all site-only agreements, the purpose and objective of the Bill will fail to be realised for many years.
- 6.37 On balance, the Committee's view is that there is sufficient justification to retrospectively remove without grounds termination from all periodic tenancy site-only agreements given the significant number of broad ranging grounds for termination which will be enshrined to protect park operators.

FINDING 3

The retrospective application of certain transitional provisions in the Residential Parks (Long-stay Tenants) Amendment Bill is justified.

7 Scrutiny of selected clauses in the Bill

- 7.1 The Committee identified the following concerns with certain clauses in the Bill:
- 7.1.1 the inappropriate delegation of legislative power
 - 7.1.2 the use of Henry VIII clauses.
- 7.2 The Committee, having considered all concerns raised by submitters, has reported on specific concerns in relation to:
- 7.2.1 the park operator's continuing disclosure obligations about material changes in relation to residential parks
 - 7.2.2 charging fees for the cost of replacing keys or security devices
 - 7.2.3 protecting park operators and their employees from threats and abuse from tenants

and has made recommendations:

7.2.4 seeking further information from the Government

7.2.5 proposing amendments to some sections to address these concerns.

7.3 The Committee has also made a number of findings for the purpose of clarifying the operation of some provisions of the Bill to address misunderstandings about their effect on tenants and park operators.

Clause 4, proposed section 3

7.4 Clause 4 proposes in section 3 to include a new definition for 'residential park', which:

(b) does not include 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;

7.5 Legislative power should only be delegated in appropriate cases and to appropriate persons (FLP 12 in Appendix 2).

7.6 It is inappropriate for delegated legislation to deal with substantive matters that should be in primary legislation. Examples include appropriations of money; significant questions of policy; and rules which have a significant impact on individual rights and liberties.

7.7 The Committee identified subclause (b)(ii) of the definition of 'residential park' in proposed section 3 as providing for regulations to deal with substantive matters which should be dealt with in the Act.

7.8 There is no criteria in the Bill governing what sort of place or class of place is intended to be covered by this broad regulation-making power, which could exclude a wide range of places from the scope of the Act. It is an inappropriate delegation of legislative power as it leaves a substantive matter, namely, what may not be considered a residential park and therefore not covered by the Act, to the regulations.

7.9 When asked its position on providing criteria to explain the sorts of places this provision is intended to cover, DMIRS advised:

This broader definition may unintentionally capture places that the legislation is not intended to regulate. Subclause (b)(ii) is intended to allow for those places to be excluded from the application of the Act.

By way of example, legislation in New South Wales excludes:

- places owned or managed by a co-operative
- a place that is wholly subject to a strata scheme or community scheme; and
- a place owned by a company title corporation occupied by shareholders of the corporation.

As [*sic*] this time it is not intended to exclude any places from the application of the Act.⁴⁹

⁴⁹ Answers to written questions tabled at hearing held with DMIRS on 1 March 2019, p 2, Attachment B, p 1. The legislation referred to is the *Residential (Land Lease) Communities Act 2013* (NSW), which, in section 8(1), lists the excluded places referred to, as well as 'any other place prescribed by the regulations' in section 8(1)(d).

Committee comment

7.10 The Committee regards subclause (b)(ii) of the definition of 'residential park' in clause 4, proposed section 3 as an inappropriate delegation of legislative power. It provides for the regulations to deal with a substantive matter which should be dealt with in the Bill.

FINDING 4

Subclause (b)(ii) of the definition of 'residential park' in clause 4, proposed section 3 constitutes an inappropriate delegation of legislative power.

7.11 The Committee regards the lengthy consultation period on the Bill as sufficient time to have identified whether any places should be excluded from the operation of the Act and, if so, referred to in the Bill.

7.12 The Committee therefore seeks further information from the Government justifying the inclusion of this proposed regulation-making power.

RECOMMENDATION 2

The Minister representing the Minister for Commerce explain to the Legislative Council why subclause (b)(ii) of the definition of 'residential park' in clause 4, proposed section 3 should not be deleted.

Clause 5, proposed section 5(2)(d)

7.13 Clause 5 proposes section 5(2)(d). It states:

5. Long-stay agreements

- (2) However, an agreement is not a long-stay agreement if it —
(b) is a prescribed agreement or class of agreement.

7.14 The Committee has similar concerns with this broad regulation-making power as set out in paragraphs 7.7 to 7.8, again raising FLP 12.⁵⁰ The ability for regulations to exclude a type of agreement or, more broadly, a class of agreement from the scope of the Act is a substantive matter and, therefore, an inappropriate delegation of legislative power.

7.15 DMIRS has stated that the broader definition of 'long-stay agreement' in proposed section 5 'may unintentionally capture agreements that the legislation is not intended to regulate' and that proposed section 5(2)(d) 'is intended to allow for those agreements to be excluded from the application of the Act'.⁵¹

7.16 DMIRS again referred to examples in other legislation:

By way of example, equivalent legislation [sic] other jurisdictions excludes the following types of agreements:

- an agreement for casual occupation of a caravan park; and
- an agreement giving right of occupancy in a hotel, motel, educational institution, college, hospital, nursing home, club premises, aged care facility or supported residential facility⁵²

⁵⁰ See Appendix 2.

⁵¹ Answers to written questions tabled at hearing held with DMIRS on 1 March 2019, p 3.

⁵² *ibid.*

7.17 DMIRS also stated that at this time 'it is not intended to exclude any agreements from the application of the Act'.⁵³

Committee comment

7.18 The Committee regards clause 5, proposed section 5(2)(d) as an inappropriate delegation of legislative power. It provides for the regulations to deal with a substantive matter which should be dealt with in the Bill.

FINDING 5

Clause 5, proposed section 5(2)(d) constitutes an inappropriate delegation of legislative power.

7.19 The Committee regards the lengthy consultation period on the Bill as sufficient time to have identified whether any agreements or classes of agreement should be excluded from the application of the Act and, if so, referred to in the Bill.

7.20 The Committee therefore seeks further information from the Government justifying the inclusion of this proposed regulation-making power.

RECOMMENDATION 3

The Minister representing the Minister for Commerce explain to the Legislative Council why clause 5, proposed section 5(2)(d) should not be deleted.

Clause 10, proposed section 9A

7.21 Clause 10 proposes section 9A. It states:

9A. Modification of Act by regulations

The regulations may prescribe that a provision of this Act does not apply to, or applies in a modified way to —

- (a) a long-stay agreement or class of long-stay agreement; or
- (b) a residential park or class of residential park.

7.22 When scrutinising legislation the Committee considers whether the Bill allows or authorises the amendment of an Act only by another Act (FLP 14 in Appendix 2). Clauses which allow or authorise the amendment of an act by subsidiary legislation, including regulations, are known as Henry VIII clauses.

7.23 The Committee has previously concluded Henry VIII clauses should be avoided on the basis they remove from the Parliament and pass to the Executive the power to make or repeal statute law. They should not be insurance against unforeseen consequences or for mere administrative convenience or flexibility.

7.24 The Committee identified this clause as a possible Henry VIII clause.

7.25 The Explanatory Memorandum provides the following information on the purpose of this proposed section:

A new provision is included to allow for regulations to modify the application of the Act in relation to specified long-stay agreements or classes of long-stay agreement or specified residential parks or classes of residential park.

⁵³ *ibid.*

This provision will allow for flexibility in the application of the Act and ensure that the operation of the Act can be modified in a timely manner in response to new developments in the sector.

This provision mirrors a similar provision that is contained in the Residential Tenancies Act 1987.⁵⁴

7.26 The Committee sought further advice from DMIRS on the justification for including this proposed section in the Bill and whether DMIRS regarded it as a Henry VIII clause. DMIRS explained why certain matters are proposed to be included or excluded by regulation 'to give effect to, rather than derogate from the intent of the primary legislation'.⁵⁵

- Key definitions such as 'long-stay agreement' and 'residential park' have been drafted in deliberately broad terms to ensure protections to residents apply as broadly as possible.
- Broad drafting presents a risk certain premises or persons who were never intended to benefit from the protections may also be inadvertently captured by the legislation, particularly as the industry evolves over time.
- Due to the diverse nature of the residential parks sector, there are some types of requirements in the Act that may be inappropriate to apply to certain types of park.⁵⁶

7.27 DMIRS stated further:

The Department is of the view that the regulation making power in section 9A is justified on the basis that this power is only intended to be used to ensure the policy intent of the primary legislation (once approved by Parliament) is not undermined by any unintentional and unforeseen consequence that may subsequently arise (for example, as a result of a drafting anomaly, technical matter or an unforeseeable change in the sector).

For example, there are a small number of residential parks in Western Australia that are strata titled. For these parks the requirements of the Act relating to the establishment of park liaison committees (with representation by the park operator and tenants) are inconsistent with the ownership structure in strata titled parks. The power to make regulations to vary the application of the Act will allow for modification of these requirements to suit strata parks.⁵⁷

7.28 In the following exchange, additional feedback was given by DMIRS on the justification for this proposed section:

Ms Blackwell: The intention of that provision to allow for modification or exemption from of [sic] the act—and as I have just explained, we have actually provided a broader definition of "residential park" and a broader definition of "long-stay agreement" to ensure that all appropriate agreements are covered by the act. There is a risk that inadvertently something will be captured, so the ability to say the act does not apply to this type of arrangement is necessary so that we can ensure that it does apply appropriately. ...

Hon NICK GOIRAN: But you cannot currently foresee such a scenario?

Ms Blackwell: We cannot currently foresee any type of arrangement, but I am sure the Caravan Industry Association probably were talking about how the market is evolving and innovating and there is a need to be able to do that. We certainly do

⁵⁴ Residential Parks (Long-stay Tenants) Amendment Bill 2018, *Explanatory Memorandum*, Legislative Council, p 4.

⁵⁵ Answers to written questions tabled at hearing held with DMIRS on 1 March 2019, p 5.

⁵⁶ *ibid.*

⁵⁷ *ibid.*

not want to fetter that, but if a new type of land use comes up that might fall within the broad definition and is not really a residential park with tenants that require protection, we would want to be able to exclude or modify the application of the act in relation to those arrangements.⁵⁸

The power to make the modifications is intended to ensure that where there needs to be a modification or a variation to how a provision works in relation to certain specified circumstances, the government can respond quite quickly and move with evolving circumstances as well, and deal with issues as they perhaps arise.⁵⁹

7.29 In Attachment B to its written answers to questions,⁶⁰ DMIRS provided the following preliminary assessment of what modifications to the Act will be made by regulations under this proposed section:

Modifications for strata parks. Regulations will need to vary the application of the RPLT Act to deal with:

- matters dealt with by strata titles legislation;
- community aspects of park living that assume one owner such as:
 - park liaison committees; and
 - park rules.⁶¹

Committee comment

7.30 The Committee regards clause 10, proposed section 9A as a Henry VIII clause on the basis it provides for the application of primary legislation to be modified by subsidiary legislation, infringing FLP 14.

FINDING 6

Clause 10, proposed section 9A is a Henry VIII clause.

7.31 The Committee is not convinced there is justification for inclusion of proposed section 9A. In reaching this view, it notes the lengthy consultation period for the Bill in which DMIRS has had sufficient time to foresee any matters that can be provided for in the Bill.

RECOMMENDATION 4

That clause 10 be opposed.

7.32 The Committee concludes matters referred to in paragraph 7.29 could be included in the Bill.

RECOMMENDATION 5

The Minister representing the Minister for Commerce advise the Legislative Council of amendments to the Residential Parks (Long-stay Tenants) Amendment Bill 2018 to address the matters set out in paragraph 7.29 of this report.

⁵⁸ Amanda Blackwell, Legal Policy Officer, DMIRS, *Transcript of evidence*, 1 March 2019, p 21.

⁵⁹ *ibid.*, p 22.

⁶⁰ See Appendix 4.

⁶¹ Answers to written questions tabled at hearing held with DMIRS on 1 March 2019, p 2, Attachment B, p 1.

Clause 19, proposed section 20A

7.33 Clause 19 proposes section 20A. It states:

20A. Park operator's continuing disclosure obligations about material changes in relation to residential parks

(1) In this section —

material change, in relation to a residential park, means an arrangement or restriction that might materially affect the occupation or use of a site or other park premises in a park by the park operator or long-stay tenant.

Examples of material changes:

1. A sale or redevelopment of the residential park.
 2. A change in a requirement of a licence a park operator is required to hold under a written law that impacts on the tenant's use of the park.
 3. A change in the use of land for which an approval of development is required under the *Planning and Development Act 2005*.
- (2) This section applies if, after a long-stay tenant has entered into a site-only agreement a park operator becomes aware of a material change in relation to the residential park where the site the subject of the long-stay agreement is located.
- (3) The park operator must give the long-stay tenant a written notice stating how the tenant's use or enjoyment will be affected as soon as reasonably practicable after the park operator becomes aware of the material change in relation to the park.

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

7.34 In its submission to the Committee, CIAWA expressed concern that proposed section 20A, as drafted:

may require operators to continuously advise tenants of anything that might possibly occur that could materially affect them.⁶²

7.35 CIAWA recommended:

7.35.1 the disclosure obligation only apply to arrangements or restrictions that are materially likely to occur

7.35.2 the written notice the park operator gives to the tenant sets out the material change and how they consider the tenant's use and enjoyment will be affected.⁶³

7.36 DMIRS initially considered these amendments unnecessary on the following basis:

The reference to a material change is intended to be a reference to a change that is actually likely to occur, not something that is fanciful or farfetched and to that [*sic*] change that would affect the tenancy, so is likely to affect the tenant's use and enjoyment in relation to the park.⁶⁴

⁶² Submission 1 from CIAWA, 1 March 2019, p 6. See also Greg Wheatley, Director, MPH Lawyers, *Transcript of evidence*, 1 March 2019, p 9.

⁶³ *ibid*.

⁶⁴ Amanda Blackwell, Legal Policy Officer, DMIRS, *Transcript of evidence*, 1 March 2019, p 9. See also DMIRS response to CIAWA submission, p 2.

- 7.37 Parliamentary Counsel's Office advised DMIRS that:
- the phrase "and which is materially likely to occur" may create some uncertainty or unintentionally broaden the application of the provision.⁶⁵
- 7.38 Parliamentary Counsel's Office suggested the following amendment to the definition of 'material change' in proposed section 20A(1), if it is required, as underlined:
- material change**, in relation to a residential park, means an arrangement or restriction that is reasonably likely to occur that might materially affect the occupation or use of a site or other park premises in a park by the park-operator or long-stay tenant.⁶⁶
- 7.39 The Committee agrees with the amendment suggested by Parliamentary Counsel's Office, which it believes will address CIAWA's concern and makes the following recommendation:

RECOMMENDATION 6

Clause 19, proposed section 20A(1) be amended as follows:

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

is reasonably likely to occur and

Clause 20, proposed amended section 21(2)

- 7.40 Clause 20 proposes to delete section 21(2)(b). Section 21(2) states:

21. Security bonds

- (2) A park operator must not require or receive payment of a security bond if the amount of the bond is more than the sum of —

- (b) an amount of not more than \$100 by way of security for keys, remote control entry devices or other security devices provided by the park operator for the use of a tenant or, if another amount is prescribed for the purposes of this paragraph, the prescribed amount;

- 7.41 CIAWA submitted park operators should continue to be allowed to charge tenants for replacing lost or damaged keys or security devices and proposed an amendment to section 21 to effect this.⁶⁷
- 7.42 DMIRS has confirmed that the cost of replacing keys or security devices will be included as a prescribed fee under clause 15, proposed section 12.⁶⁸ The Committee notes Attachment B to DMIRS's written answers to questions does not include any such fees.⁶⁹

FINDING 7

The Department of Mines, Industry Regulation and Safety intends that the cost of replacement keys or security devices for residential parks will be a prescribed fee under regulations pursuant to clause 15, proposed section 12(1)(e) of the *Residential Parks (Long-stay Tenants) Bill 2018*.

⁶⁵ DMIRS, Answer to question on notice 5 asked at hearing held 1 March 2019, p 4.

⁶⁶ *ibid.*

⁶⁷ Submission 1 from CIAWA, 20 February 2019, p 7. See also John Wood, Board Member, CIAWA, *Transcript of evidence*, 1 March 2019, p 9.

⁶⁸ DMIRS, Answer to question on notice 6 asked at hearing held 1 March 2019, p 4.

⁶⁹ Answers to written questions tabled at hearing held with DMIRS on 1 March 2019, Attachment B, p 2.

- 7.43 The Committee is of the view that the ability for park owners to charge a fee to cover the cost of replacement keys or security devices:
- 7.43.1 provides more flexibility than the existing security bond, which was capped at \$100
- 7.43.2 should be included as a prescribed fee in regulations pursuant to clause 15, proposed section 12(1)(e) of the Bill.

RECOMMENDATION 7

The Minister representing the Minister for Commerce confirm that the cost of replacement keys or security devices will be included as a prescribed fee under regulations pursuant to clause 15, proposed section 12(1)(e) of the Residential Parks (Long-stay Tenants) Bill 2018.

Clause 29, proposed section 32H

- 7.44 Clause 29 proposes section 32H, which replicates Schedule 1, clause 12 of the Act. It outlines the terms of long stay agreements relating to the provision, maintenance and alteration of locks and other security devices.
- 7.45 Proposed section 32H(4) states:
- (4) It is a term of a long-stay agreement that the park operator must not alter, remove or add any lock or similar device to the shared premises without first notifying the long-stay tenant and providing the tenant with a means of access to the shared premises.⁷⁰
- 7.46 Proposed section 32H(6) states:
- (6) A park operator must not breach the term referred to in subsection (3) or (4) without reasonable excuse.
- Penalty for this subsection: a fine of \$20 000.
- 7.47 In its submission, CIAWA expressed concern about the inability of park operators to prevent access to shared premises in certain circumstances:
- We consider that there are circumstances where park operators should be able to prevent access to shared premises (for example, in an emergency or where the shared premises are unsafe).
- We request this section is amended to allow park operators to prevent access to the shared premises in an emergency or for health and safety reasons, provided they notify long-stay tenants within a reasonable period of time afterward.⁷¹
- 7.48 The Committee sought DMIRS's feedback on whether access to premises for health and safety reasons would be considered a reasonable excuse for altering, removing or adding any lock or device to shared premises without the tenant's permission.⁷²
- 7.49 DMIRS advised:
- If locks were to be changed by a park operator for health and safety reasons, it would be the responsibility of the Department to take prosecution action. The

⁷⁰ Shared premises is defined in clause 4, proposed section 3 and includes the common areas, structures and amenities in the park provided for the use of all long-stay tenants.

⁷¹ Submission 1 from CIAWA, 1 March 2019, p 8.

⁷² Hon Nick Goiran MLC, *Transcript of evidence*, 1 March 2019, p 11.

Department would not prosecute a park operator if the locks to common areas were changed for health and safety reasons.⁷³

- 7.50 The Committee considers this addresses CIAWA's concerns regarding the operation of proposed section 32H(4) and makes the following finding:

FINDING 8

The Department of Mines, Industry Regulation and Safety has undertaken that a park operator would not be prosecuted under clause 29, proposed section 32H of the *Residential Parks (Long-stay Tenants) Amendment Bill 2018* if they change locks to shared premises for health and safety reasons.

RECOMMENDATION 8

The Residential Parks (Long-stay Tenants) Amendment Bill 2018 be amended to provide a defence from prosecution where the locks to shared premises are changed for health and safety reasons.

Clause 29, proposed section 32N

- 7.51 Clause 29 proposes section 32N, which replicates Schedule 1, clause 15 of the Act. It provides that it is a term of a long-stay agreement that the park operator must bear the cost of rates and taxes imposed in respect of the shared premises and agreed premises.⁷⁴

- 7.52 In its submission, CIAWA gave the following feedback:

The wording of this section may unintentionally prevent long-stay tenants from being eligible for rebates (which require as a condition of eligibility that long-stay tenants be directly or indirectly liable for the relevant charges).

We think the section should provide that, while the park operator must pay these amounts, the longstay tenants may still be indirectly responsible for them where the cost of these is a component of the rent. This will not affect park operators' obligation to pay the relevant amounts, but will still allow longstay tenants to remain eligible for rebates.⁷⁵

- 7.53 DMIRS gave the following feedback about CIAWA's proposed amendment to proposed section 32N:

It is the Department's understanding that CIAWA seeks to have this amendment included so that eligible tenants can access rebates for certain rates and charges in line with the requirements of the Rates and Charges (Rebates and Deferrals) Act 1992. Sections 29B and 29C of that Act provide that a person will be eligible for a rebate if the person has entered into a written agreement with the lessor of land in a caravan park or residential park to pay (either directly or indirectly) the relevant rates or charges. The tenant must also be eligible for rebates (for example as a senior) and have a lease for 5 years or more.

⁷³ DMIRS, Answer to question on notice 7 asked at hearing held 1 March 2019, p 5.

⁷⁴ Residential Parks (Long-stay Tenants) Amendment Bill 2018, *Explanatory Memorandum*, Legislative Council, p 19. 'Agreed premises' is defined in clause 4, proposed section 3 and includes the site the long-stay tenant is entitled to use or occupy under a long-stay agreement.

⁷⁵ Submission 1 from CIAWA, 20 February 2019, p 15.

The Department is currently seeking further information about the extent to which these provisions are utilised in the residential parks sector in order to assess any potential consequences of the proposed amendment in the Bill.

The Department is of the view that the amendment proposed by CIAWA may be framed too broadly and could possibly undermine the intention of proposed section 32N – which is to ensure that park operators are responsible for these costs.⁷⁶

- 7.54 The Committee seeks feedback from the Government on this matter and makes the following recommendation:

RECOMMENDATION 9

The Minister representing the Minister for Commerce address the concerns raised in relation to the extent to which sections 29B and 29C of the *Rates and Charges (Rebates and Deferments) Act 1992* are utilised in the residential parks sector.

Clause 31, proposed amended section 33(3)

- 7.55 Clause 31 proposes an amendment to section 33(3) of the Act so that a long-stay agreement can no longer be terminated if a mortgagee enters into possession of agreed premises.
- 7.56 The Committee queried whether this amendment will have any impact on the preparedness of mortgagees to grant loans to park operators.⁷⁷ DMIRS advised:
- 7.56.1 This issue was considered as part of the statutory review of the Act.
- 7.56.2 It is difficult to determine whether regulatory requirements have an impact on the ability of an operator to obtain finance given the number of factors a financier will take into account.
- 7.56.3 It was not provided with any evidence that similar provisions in other jurisdictions have resulted in a reluctance of financiers to lend to operators.⁷⁸
- 7.57 The Committee notes that the effect of proposed section 109 is that proposed amended section 33(3) does not operate retrospectively. In other words, a long-stay agreement can be terminated if a mortgagee under a mortgage entered into before the commencement of the Bill enters into possession of agreed premises.⁷⁹

Clause 59, proposed sections 62A, 62C and 63

- 7.58 Clause 59 includes proposed sections 62A, 62C and 63.⁸⁰
- 7.59 Proposed sections 62A and 62C set out the circumstances in which a party to a long-stay agreement may apply to the SAT for relief (62A) and the directions and orders that SAT may make on hearing applications under the Act (62C). These proposed sections replicate current section 62 of the Act.
- 7.60 Under proposed section 63, which is in similar terms to section 63 of the Act, a long-stay tenant may apply to the SAT for an order for the reduction of rent on various grounds.

⁷⁶ DMIRS, Answer to question on notice 9 asked at hearing held 1 March 2019, pp 5-6.

⁷⁷ Hon Dr Sally Talbot MLC, *Transcript of evidence*, 1 March 2019, p 22.

⁷⁸ DMIRS, Answer to question on notice 11 asked at hearing held 1 March 2019, p 7.

⁷⁹ Residential Parks (Long-stay Tenants) Amendment Bill 2018, cl 81, proposed section 109.

⁸⁰ Clause 59 proposes to insert a total of 13 sections.

- 7.61 In its submission, PHOAWA expressed concerns about the Bill not applying to periodic leases as well as the amount of rent paid by tenants in residential parks. It stated that 'homeowners need the same opportunity to go to SAT where consistent rent increases don't meet current conditions'.⁸¹
- 7.62 The Committee notes the Bill does, in fact, contain a mechanism to ensure tenants on periodic agreements have the capacity to apply to SAT for an order about the amount of rent payable under an agreement.⁸²
- 7.63 The Committee notes that this addresses the concern raised by PHOAWA and makes the following finding:

FINDING 9

Tenants on periodic agreements will be able to seek an order from the State Administrative Tribunal about the amount of rent payable under an agreement.

Clause 59, proposed section 63C

- 7.64 Clause 59 proposes section 63C, which provides that a person who is occupying premises but is not named as a long-stay tenant under the long-stay agreement, may apply to the SAT to be recognised as a tenant in respect of the agreed premises. This is in circumstances where the resident has asked to be named as a tenant and the park operator has refused.⁸³
- 7.65 The Committee sought clarification from DMIRS whether this capacity to apply to the SAT applies to all existing long-stay agreements or only new agreements entered into after the commencement of the Bill.⁸⁴
- 7.66 DMIRS advised that proposed section 63C will apply from the commencement day to all long-stay agreements⁸⁵
- 7.67 Accordingly, the Committee makes the following finding:

FINDING 10

The ability for a person who is occupying premises to apply to the State Administrative Tribunal to be recognised as a long-stay tenant in respect of agreed premises under clause 59, proposed section 63C of the Residential Parks (Long-stay Tenants) Amendment Bill 2018 will apply from the commencement day to all existing as well as new long-stay agreements.

⁸¹ Submission 2 from PHOAWA, 22 February 2019, pp 9-10. See also Nada Bond, Assistant Secretary, PHOAWA, *Transcript of evidence*, 1 March 2019, p 6.

⁸² Residential Parks (Long-stay Tenants) Amendment Bill 2018, cl 59, proposed section 62A(2) and cl 59, proposed section 62C; DMIRS, Answer to question on notice 10 asked at hearing held 1 March 2019, p 6. See also Hon Nick Goiran MLC, *Transcript of evidence*, 1 March 2019, p 19.

⁸³ Residential Parks (Long-stay Tenants) Amendment Bill 2018, *Explanatory Memorandum*, Legislative Council, p 33. See also Submission 4 from Shelter WA, p 4, who expressed support for this reform.

⁸⁴ Hon Nick Goiran MLC, *Transcript of evidence*, 1 March 2019, p 12.

⁸⁵ DMIRS, Answer to question on notice 8 asked at hearing held 1 March 2019, p 5; Amanda Blackwell, Legal Policy Officer, DMIRS, Email, 12 March 2019.

Clause 66, proposed section 71A

7.68 Clause 66 proposes section 71A. It states:

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

- (1) 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 repeatedly interferes, or has repeatedly interfered, with another tenant's quiet enjoyment of the residential park.
- (2) 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 repeatedly interferes, or has repeatedly interfered, with the quiet enjoyment of the residential park by the other tenants;
 - (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 the interference;
 - (c) despite being asked to stop the interference, the long-stay tenant or the tenant's guest has not stopped;
 - (d) terminating the agreement is justified in all the circumstances.
- (3) 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.
- (4) 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.

7.69 In its submission, CIAWA, while supporting proposed section 71A, stated that it:

does not protect a park operator or a park operator's employees from repeated threats or abuse, which are unfortunately common, can cause immense stress, and mean that a park operator is not able to provide a safe working environment for the park operator's employees.⁸⁶

7.70 CIAWA recommended amending proposed section 71A to enable a park operator to apply to the SAT to terminate a long-stay agreement where a tenant or their guest 'repeatedly threatens or abuses, or has repeatedly threatened or abused, the park operator or an employee of the park operator'.⁸⁷

7.71 The Committee explored with DMIRS the differences between the protection section 71 currently affords park operators and their agents (tenants causing serious damage to park premises or injury) and where tenants repeatedly threaten or abuse them.⁸⁸

⁸⁶ Submission 1 from CIAWA, 20 February 2019, p 2. See also John Wood, Board Member, CIAWA, and Greg Wheatley, Director, MPH Lawyers, *Transcript of evidence*, 1 March 2019, pp 4-5.

⁸⁷ Submission 1 from CIAWA, 20 February 2019, pp 2-3.

⁸⁸ Amanda Blackwell, Legal Policy Officer, DMIRS, *Transcript of evidence*, 1 March 2019, pp 6-7.

7.72 DMIRS subsequently advised that:

there may [sic] a gap in the proposed legislative framework, in that threats or abuse of a park operator or employee may not reach the threshold set out in section 71 (which refers to circumstances where a tenant causes or permits or is likely to cause or permit injury). The Department recognises that park operators and their staff have the right to a workplace that is free from intimidation and harassment.⁸⁹

7.73 DMIRS also advised that, should the Bill provide for the ability to terminate an agreement on the ground that a tenant has threatened or abused a park operator or its staff, safeguards will be required, including the provision referring to:

serious or persistent threats or abuse, so that minor incidents do not justify termination.⁹⁰

Committee comment

7.74 The Committee agrees with CIAWA that proposed section 71A should be amended to cover circumstances where park operators and their staff are threatened or abused by tenants. They have the right to a workplace that is free from intimidation and harassment.

7.75 The Committee also agrees with DMIRS that the ability of a park operator to terminate an agreement should only arise where serious or persistent threats or abuse have been made, not minor incidents and makes the following recommendation:

RECOMMENDATION 10

Clause 66, proposed section 71A be amended as follows:

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 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;

⁸⁹ DMIRS, Answer to question on notice 2 asked at hearing held 1 March 2019, p 2.

⁹⁰ *ibid.*

- (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, proposed section 114A

7.76 Hon Alison Xamon MLC has signalled her intention, recorded in Supplementary Notice Paper No. 99, Issue No. 1 of 13 February 2019 (Supplementary Notice Paper), to move an amendment to insert a new section 114A in clause 81, as follows:

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.

7.77 The Committee sought the views of DMIRS on this proposed amendment, which stated:

7.77.1 It is intended that proposed section 62A(2)(b) apply to all long-stay agreements, both existing and new.

7.77.2 A specific transitional provision is not required as proposed section 62A(2)(b) creates a right that can be exercised from the commencement date, rather than affecting the terms of existing contracts.⁹¹

7.77.3 DMIRS stated further:

We have considered whether the amendment proposed by Hon Alison Xamon MLC would clarify the application of the proposed provision – however, there is a risk that in including transitional provisions for specified provisions, there will be uncertainty in relation to the balance of the amendments. With the possibility that the SAT might determine that

⁹¹ Amanda Blackwell, Legal Policy Officer, DMIRS, Email, 14 March 2019.

the amendments are not intended to apply to existing contracts because there are no specific provisions stating that they do apply.⁹²

- 7.78 The Committee is of the view that DMIRS's feedback addresses the issue raised by the Supplementary Notice Paper as DMIRS's advice makes it clear that proposed section 62A, in its application to harsh or unreasonable terms in long-stay agreements, applies to all existing and new long-stay agreements.

Clause 81, proposed section 115(2)

- 7.79 Clause 81 proposes section 115(2). It states:

115. Transitional regulations

(2) Transitional regulations may provide that specified provisions of this Act —

- (a) do not apply to or in relation to any matter; or
- (b) apply with modifications specified in the regulations to or in relation to any matter.

- 7.80 The Committee identified this clause as a possible Henry VIII clause.

- 7.81 There have been a number of examples of bills proposing transitional provisions conferring Henry VIII powers.⁹³

- 7.82 DMIRS sought to justify this proposed section on the basis:

this power to include or exclude terms by regulation is intended to ensure the policy intent of the Bill is not undermined by an unforeseeable or unintended consequence during transition.⁹⁴

- 7.83 Attachment B to DMIRS's written answers to questions also provides the following preliminary assessment of what transitional regulations made under this proposed section are intended to cover:

Any transitional regulations required.

Voluntary sharing arrangements in pre-commencement agreements to be valid notwithstanding that requirements of Act (such as specific disclosure) not complied with.⁹⁵

Committee comment

- 7.84 The Committee regards proposed section 115(2) as a Henry VIII clause on the basis it provides for the application of primary legislation to be modified by subsidiary legislation, infringing FLP 14.⁹⁶

FINDING 11

Clause 81, proposed section 115(2) is a Henry VIII clause.

⁹² *ibid.*

⁹³ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 55, *Trade Measurement Legislation (Amendment and Expiry) Bill 2010*, 11 November 2010, pp 10-12.

⁹⁴ Answers to written questions tabled at hearing held with DMIRS on 1 March 2019, p 10.

⁹⁵ Answers to written questions tabled at hearing held with DMIRS on 1 March 2019, p 2, Attachment B, p 9.

⁹⁶ See Appendix 2.

7.85 The Committee is not convinced there is justification for inclusion of proposed section 115(2). In reaching this view, it notes the lengthy consultation period for the Bill in which DMIRS has had sufficient time to foresee any matters that can be provided for in the Bill.

RECOMMENDATION 11

Clause 81, proposed section 115 be amended as follows:

Page 119, lines 20 to 24 – To delete the lines.

Page 119, line 25 – To delete “(1) or (2),” and insert:

(1),

7.86 The Committee concludes matters referred to in paragraph 7.83 could be included in the Bill.

RECOMMENDATION 12

The Minister representing the Minister for Commerce advise the Legislative Council of any amendments to the Residential Parks (Long-stay Tenants) Amendment Bill 2018 necessary to validate voluntary sharing arrangements in pre-commencement agreements notwithstanding that the requirements of the *Residential Parks (Long-stay Tenants) Act 2006* have not been complied with as referred to in paragraph 7.83 of this report.

8 Conclusion

- 8.1 The Committee supports the policy of the Bill and is of the view it strikes a good balance between the interests of tenants and park operators.
- 8.2 The Committee is also of the view that the retrospective application of certain transitional provisions in the Bill is justified.
- 8.3 The Committee has made recommendations in which it has:
- 8.3.1 drawn the attention of the House to its concerns with two Henry VIII clauses and two broad regulation-making powers it regards as inappropriately delegating legislative power
 - 8.3.2 proposed amendments to clauses in the Bill it believes will further improve the legislation.
- 8.4 The Committee has also sought to facilitate a better understanding of the operation of the Bill and how it affects tenants and park operators and address misunderstandings about the effect of some provisions identified in the evidence it received.
- 8.5 The Committee recommends the Bill be passed subject to:
- 8.5.1 satisfactory explanations in response to recommendations 1 to 3, 5, 7, 9 and 12
 - 8.5.2 amendments to the Bill the subject of recommendations 4, 6, 8, 10 and 11.



Hon Dr Sally Talbot MLC

Chair

APPENDIX 1

STAKEHOLDERS CONTACTED, SUBMISSIONS RECEIVED AND PUBLIC HEARINGS

Stakeholders contacted

Number	From
1	Hon John Quigley MLA, Minister for Commerce
2	Department of Mines, Industry Regulation and Safety
3	Housing Authority of Western Australia
4	Commissioner for Consumer Protection
5	Park Home Owners Association WA Inc
6	Caravan Industry Association Western Australia
7	Caravan Industry Association of Australia
8	National Lifestyle Villages
9	WA Association of Caravan Clubs
10	Tenancy WA
11	Shelter WA
12	Goldfields Community Legal Centre
13	State Administrative Tribunal
14	Law Society of Western Australia
15	Real Estate Institute of Western Australia
16	Property Council of Western Australia
17	143 owners and operators of caravan parks, campsites, tourist parks and lifestyle villages ⁹⁷

Submissions received

Number	From
1	Caravan Industry Association Western Australia
2	Park Home Owners Association WA Inc

⁹⁷ These organisations are not members of the Caravan Industry Association Western Australia. A list is available on the Committee's website.

Number	From
3	Department of Mines, Industry Regulation and Safety
4	Shelter WA

Public hearings held

Date	Participants
1 March 2019	<p>Park Home Owners Association WA Inc</p> <p>Nada Bond, Assistant Secretary</p> <p>Caravan Industry Association Western Australia</p> <p>Craig Kenyon, Chief Executive Officer</p> <p>John Wood, National Lifestyle Villages</p> <p>Chris Sialtsis, Owner operator, Wanneroo Caravan Park, Perth Central Caravan Park</p> <p>Jacob Chacko, Owner operator, Acclaim Tourist Parks</p> <p>Dale Wood, Owner operator, Dawesville Caravan Park</p> <p>Department of Mines, Industry Regulation and Safety</p> <p>David Smith, Director-General</p> <p>Penny Lipscombe, Director Legislation and Policy, Consumer Protection</p> <p>Tom Filov, General Manager Legislation and Policy, Consumer Protection</p> <p>Amanda Blackwell, Legal Policy Officer, Consumer Protection</p>

APPENDIX 2

FUNDAMENTAL LEGISLATIVE PRINCIPLES

Does the Bill have sufficient regard to the rights and liberties of individuals?

1. Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?
2. Is the Bill consistent with principles of natural justice?
3. Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?
4. Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?
5. Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?
6. Does the Bill provide appropriate protection against self-incrimination?
7. Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?
8. Does the Bill confer immunity from proceeding or prosecution without adequate justification?
9. Does the Bill provide for the compulsory acquisition of property only with fair compensation?
10. Does the Bill have sufficient regard to Aboriginal tradition and Island custom?
11. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Does the Bill have sufficient regard to the institution of Parliament?

12. Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
13. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?
14. Does the Bill allow or authorise the amendment of an Act only by another Act?
15. Does the Bill affect parliamentary privilege in any manner?
16. In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?

APPENDIX 3

STATUTORY REVIEW RECOMMENDATIONS

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED ⁹⁸		Implementation	
		Bill	Other
PART 6 - SCOPE OF TENANCIES COVERED BY THE RPLT ACT			
6.1	<p>Renters of both site and dwelling (renters):</p> <p>It is recommended that long-stay agreements with renters continue to be regulated under the RPLT Act. Where appropriate, it is proposed to amend the RPLT Act to mirror recent amendments to the Residential Tenancies Act, so that tenants are treated equitably irrespective of the nature of the premises they lease.</p>	✓	
6.2	<p>Regulation of strata titled caravan parks:</p> <p>It is recommended that long-stay agreements in strata parks continue to be regulated under the RPLT Act. It is also proposed that the operation of the RPLT Act be modified in some parts to specifically accommodate strata parks.</p>	✓	The proposal to modify the application of the Act to strata parks will be implemented by regulations made under proposed section 9A.
PART 7 - CONTRACTING OUT OF THE ACT			
7.1	<p>Rolling short term contracts</p> <p>It is proposed that the RPLT Act be amended so that it applies to all tenancies entered into for non-holiday purposes, subject to some specified exceptions.</p>	✓	
7.2	<p>Contracting Out</p> <p>It is recommended that the RPLT Act be amended to prohibit any form of contracting out of the Act, including the standard terms of long-stay agreements set out in Schedule 1.</p>	✓	
7.3	<p>Contract provisions preventing the registration of a lease or a caveat</p> <p>It is recommended that no change be made to the RPLT Act regarding the registration of leases or caveats provided the recommendations relating to mortgagee possession (10.4) and termination of fixed-term tenancies on sale (10.3) are implemented. The implementation of these recommendations will mean the need to lodge a caveat would no longer be required.</p>		No amendment required.

⁹⁸ DMIRS, Answer to question on notice 12 asked at hearing held 1 March 2019, p 7, Attachment 3.

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED ⁹⁸		Implementation	
		Bill	Other
7.4	<p>Unilateral variation of a contract</p> <p>It is proposed that no change be made the unilateral variation prohibition; however the provisions of the RPLT Act will be reviewed in order to ensure that the prohibition is clear. Community education will also be undertaken, to ensure that people are aware that the prohibition exists.</p>		No amendment required. Community education will be undertaken to ensure that obligations are well understood by all parties.
PART 8 - PARK RULES			
8	<p>It is recommended that the RPLT Act and RPLT Regulations be amended to include specific provisions about the nature, enforcement and amendment of park rules.</p> <p>In setting prohibitions on certain types of rules, it is proposed that:</p> <ul style="list-style-type: none"> the focus of the rules should be confined to regulation of the interaction of residents in the common areas and how the use of their site impacts on other residents; and the rules should not extend to key matters specific to the resident's tenancy, including rent, fees and charges, lease term and sale of home. These matters should be addressed in the long-stay agreement itself. 	✓	Amendment to regulations also required.
PART 9 - DISCLOSURE			
9.1	<p>What information should be provided to a tenant?</p> <p>It is recommended that the RPLT Act and RPLT Regulations be amended to strengthen and improve disclosure requirements subject to any requirements of privacy legislation. Disclosure documents will be revised, updated and consolidated where appropriate to ensure that the key elements of the long-stay agreement are brought to the attention of prospective long-stay tenants before they enter into a long-stay agreement. The onus will remain on the prospective tenant to satisfy themselves of the appropriateness of the park and the terms of the long-stay agreement.</p>	✓	Amendment to regulations also required.

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED⁹⁸

		Implementation	
		Bill	Other
9.2	<p>When should disclosure be required?</p> <p>It is recommended that the RPLT Act be amended to set a minimum timeframe for disclosure documents and a copy of the agreement to be given to prospective tenants.</p> <p>The suggested timeframe is not less than five business days before an agreement is entered into. Waiver of the advanced disclosure period will be permitted in the case of tenants with their own registered vehicle, provided they are given the required disclosure documentation prior to their occupancy of the site and confirm in writing that they do not wish to take advantage of the five day advanced disclosure period.</p> <p>The timeframe for provision of disclosure documents would only apply to site only agreements. The advance disclosure requirement will not be applicable to renters, as this could impact on the ability of persons to obtain emergency accommodation.</p>	✓	
9.3	<p>Should ongoing disclosure be required?</p> <p>It is recommended that the RPLT Act be amended to include ongoing disclosure requirements during a tenancy for site-only agreements.</p> <p>A park operator will be required to disclose in writing to a home-owner any arrangements or restrictions, of which the park operator becomes aware, that will impact on the tenant's occupation of the park, subject to any requirements of privacy legislation. There will be no requirement for the park operator to provide any information surrounding their normal day-to-day business and financial negotiations/affairs, including with their bankers or other financiers.</p>	✓	
9.4	<p>Consequences of inadequate disclosure</p> <p>It is recommended that the RPLT Act be amended to strengthen the range of remedies available to address insufficient disclosure, by giving the SAT power to make an order for compensation for loss or damage arising out of inadequate disclosure or rescission of an agreement (if the tenant would not have entered into the agreement if full disclosure had been made). Penalties will apply for not completing and providing a disclosure statement to a prospective tenant.</p>	✓	

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED ⁹⁸		Implementation	
		Bill	Other
PART 10 – FACTORS AFFECTING SECURITY AND DURATION OF TENURE			
10.1	<p>Mandating minimum lease periods</p> <p>It is recommended that no mandatory minimum fixed term lease period be imposed. However disclosure documents will be amended to clearly set out the risks for prospective tenants in entering into a periodic lease or a lease with a short fixed term.</p>		No amendment required.
10.2	<p>Termination of tenancy without grounds</p> <p>It is recommended that the RPLT Act be amended to remove without grounds termination for periodic tenancies and to expand the range of specific grounds for termination to include:</p> <ul style="list-style-type: none"> the park is to be closed or is to be used for a different purpose, this could include the situation where the operator’s lease of the park has not been renewed or the annual licence under the CPCG Act has not been re-issued; the park requires repairs or upgrading in order to comply with statutory obligations; the park is to be appropriated or acquired by an authority by compulsory process; application by the operator for termination for serious misconduct by a home owner (on application to the SAT); “business” reasons that are sufficiently serious and significant so as to impact on the operation of the park; that the tenant has repeatedly interfered with the quiet enjoyment of the residential park by the park’s residents (on application to the SAT); home owner’s refusal to relocate – in cases of relocation at the operator’s request (where the operator is to pay all reasonable costs to relocate to another reasonably comparable site or another community close-by which the operator runs) and a new agreement is to be entered into on same or substantially similar terms; or non-use of the site by the tenant for an extended period. <p>In order to reduce the regulatory burden on mixed-use parks with renters, it is proposed that this proposal would not extend to renters.</p>	✓	<p>The following specific grounds have not been included as they are dealt with sufficiently elsewhere in the RPLT Act:</p> <ul style="list-style-type: none"> business reasons - Parliamentary Counsel’s Office advised that this phrase could be considered uncertain. The Department consulted with industry and determined that the other specific grounds included in the Residential Parks (Long-stay Tenants) Act 2006 (RPLT Act) were sufficient to cover any reasonable ground for termination. non-use of the site - dealt with by the abandonment provisions. refusal to relocate –covered by the long-stay agreement itself and can be dealt with as a breach.

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED⁹⁸

		Implementation	
		Bill	Other
	It is also recommended that section 73 of the RPLT Act, which provides that a park operator may seek and order from the SAT terminating the long-stay agreement on the ground that the park operator would suffer undue hardship if required to terminate the agreement under any other provision of the Act, be retained and expanded so that the tenant may also make an application for termination on the grounds of hardship.	✓	
10.3	<p>Termination of tenancy on the sale of the park – where vacant possession required</p> <p>It is recommended that the RPLT Act be amended to so that a park operator is no longer permitted to terminate a fixed term agreement on the sale of a park. RPLT Act will be amended to recognise that a tenant may still elect to receive compensation and vacate the park provided they are agreeable with the terms proposed by the park operator.</p> <p>Park operators would continue to have the right to terminate periodic tenancies on the grounds that a park is to be sold with vacant possession.</p>	✓	
10.4	<p>Impact of park owner insolvency – mortgagee possession</p> <p>It is recommended that the RPLT Act be amended so that long-stay agreements are not automatically terminated upon mortgagee possession.</p>	✓	
10.5	<p>Recognition of a tenant</p> <p>It is recommended that the RPLT Act be amended to provide for a person who has been residing in premises, but is not named as a tenant, such as a relative or de facto partner, to apply to the SAT for an order to recognise the person as a tenant (on such terms as appropriate in the case) and/or to join the person in relevant proceedings if the operator has unreasonably refused to grant the occupant tenancy rights.</p>	✓	
	PART 11 - COMPENSATION		
11.1	<p>Determining compensation – fixed term tenancies</p> <p>It is recommended that the RPLT Act be amended to provide that the SAT has the power to take into account financial loss incurred as a result of the early termination of a long-stay agreement.</p>	✓	
11.2	<p>Compensation on termination of a periodic tenancy</p> <p>It is recommended that the right to compensation not be extended to apply to periodic agreements. Clear information about the unavailability of compensation for periodic tenancies should be included in disclosure information.</p>		No amendment required. Disclosure material will be updated.

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED⁹⁸

		Implementation	
		Bill	Other
11.3	<p>Compensation at the end of a fixed term tenancy</p> <p>It is recommended that the right to compensation not be extended to apply at the end of a fixed term agreement. Clear information as to a tenant's potential liability for relocation costs at the end of a fixed term should be included in disclosure information. A park operator would also be required to give a home owner adequate notice (for example, 180 days) that the tenancy is to end at the expiry of the fixed term.</p>	✓	
11.4	<p>Compensation on relocation within a park</p> <p>It is recommended that the RPLT Act be amended to include a specific provision in the RPLT Act to give tenants a right to seek compensation for costs of relocating within a park when required to do so by the park operator.</p>	✓	
PART 12 - DEATH OF A TENANT – LIABILITY OF TENANT'S ESTATE			
12.1	<p>Renters</p> <p>It is recommended that the RPLT Act be amended to provide that where a sole renter dies, the long-stay agreement terminates upon their death. Any goods remaining in the park home upon the death of the tenant would be dealt with as abandoned goods. The current advertising requirements associated with abandoned goods will be reviewed.</p>	✓	
12.2	<p>Home owners</p> <p>It is recommended that the RPLT Act be amended to provide that on the death of a home owner the long-stay agreement continues until the home is sold or removed. The home-owner's estate would continue to be liable to pay rent. However, the park operator and the tenant's estate will be permitted to agree to a deferral of the payment of rent or enter into an arrangement for reduced rent (i.e. by relocating the home in the park).</p> <p>It is recommended that the RPLT Act also be amended to provide that the home owner's estate may apply to the SAT to terminate a long-stay agreement (therefore ending the estate's liability to pay rent), or to make such other order as appropriate, if the SAT is satisfied that the park operator is interfering with or obstructing the estate in its endeavours to sell the park home.</p>	✓	

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED ⁹⁸		Implementation	
		Bill	Other
PART 13 - TERMINATION OF TENANCY FOR DAMAGE TO PROPERTY AND VIOLENT BEHAVIOUR			
13	It is recommended that no change be made to the current provisions of the RPLT Act in relation to termination of tenancy for damage to property and violent behaviour.		No amendment required.
PART 14 - RENT VARIATION			
14.1	Frequency of rent increases It is recommended that no change be made to the current provisions of the RPLT Act in relation to the frequency of rent reviews.		No amendment required.
14.2	Method of varying rent It is recommended that the RPLT Act be amended to require that the method of rent review be clearly specified in all long-stay agreements; market reviews of rental will not be permitted.	✓	
14.3	Unforeseen costs It is recommended that the RPLT Act be amended to permit park operators to increase rent for specified purposes, such as a significant increase in the operational costs in relation to the park (including significant increases in taxes, rates or utilities costs) or unforeseen significant repair costs in relation to the park. Sufficient notice (for example, 60 days) would be required to be given to tenants, including details of the increase and adequately outlining the justification for the increase. If the tenants do not agree to the proposed increase, the park operator would be able to apply to the SAT for an order for the increase to apply.	✓	
PART 15 - FEES AND CHARGES			
15.1	Cost recovery in relation to fees It is recommended that the RPLT Act be amended to specifically provide that fees for items other than rent should be charged on a cost recovery basis only and to give the SAT the jurisdiction to determine disputes in relation to such matters. The RPLT Act Regulations will be amended to remove the \$200 cap on screening fees and instead impose a 'reasonable' amount requirement.	✓	
15.2	Costs of preparing a long-stay tenancy agreement It is recommended that the RPLT Act be amended to provide that the park operator must bear the costs of preparing a long-	✓	

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED ⁹⁸		Implementation	
		Bill	Other
	stay agreement and that this requirement cannot be varied by the long-stay agreement.		
15.3	<p>Visitors' fees</p> <p>It is recommended that no amendment be made to the RPLT Act in relation to the charging of visitors' fees. Visitors' fees must be clearly set out in the long-stay agreement and disclosure material. It is recommended that a requirement be introduced that the amount of the visitors' fee must be reasonable and be consistent with the principle of cost recovery.</p> <p>It is recommended that the RPLT Act be amended to provide that a carer's visit will be exempt from the payment of visitors' fees.</p>		Requirements in relation to visitors' fees will be set out in the regulations.
15.4	<p>Entry fees</p> <p>It is recommended that the current prohibition on the charging of entry fees continue.</p>		No amendment required.

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED⁹⁸

		Implementation	
		Bill	Other
15.5	<p>Exit fees</p> <p>It is recommended that the RPLT Act be amended to provide that:</p> <ul style="list-style-type: none"> • a park operator would be permitted to offer sharing agreements and charge exit fees, however there must be full transparency in relation to the terms of those arrangements which must be fully disclosed to the prospective tenant prior to their occupation; • the disclosure statement must include the basis upon which the sharing agreement and/or exit fee has been calculated. The park operator will also be required to provide worked examples that provide the costs involved in realistic scenarios so that the tenant is able to understand how the sharing agreement and/or exit fee would operate in practice; • a cooling-off period will apply to allow a prospective tenant time to consider the sharing agreement and/or exit fee material further before they commence living in the park; • an exit fee will be the only fee recoverable from an outgoing tenant. No other fee, charge or premium will be recoverable, other than the recovery of costs incurred in providing services such as selling agent or those which directly relate to obligations under the long-stay agreement. An operator will not be prevented from charging for their expenses relating to the marketing and sales service a park operator provides if appointed the selling agent for the home, even where a sharing arrangement/exit fee is in place. However, an operator will not be able to charge a set fee or percentage of the sale price, which does not reflect work done in the sale of the home, in addition to an exit fee; • in instances where a long-stay agreement is to be entered into with an existing home owner, or where the seller is not the operator of the residential park in which the park home is located, a park operator will be prohibited from only offering a sharing arrangement. In these circumstances, the park operator will be required to also offer a rent only long-stay agreement that does not include a sharing arrangement; • no standard form or clauses will be introduced in relation to exit fees/sharing arrangements. However, the parties will be prohibited from excluding the provisions of the RPLT Act or agreeing to terms inconsistent with the RPLT Act in any agreement that provides for sharing or exit fees; and • where it can be shown that prior disclosure did not occur, or where the park operator attempts to charge an outgoing long-stay tenant other charges, fees or premiums in addition to the exit fee that do not directly relate to an obligation under the long-stay agreement, any such terms or amounts will be invalid. 	✓	Amendment to regulations also required.

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED ⁹⁸		Implementation	
		Bill	Other
15.6	<p>Paying for electricity</p> <p>It is recommended that no amendments be made to the RPLT Act, however education material (fact sheets) for park operators and tenants would be produced about the rules regarding the on-selling of electricity by park operators, including requirements to provide information about the charges and a list of relevant agencies that could assist in disputes regarding these matters. In addition, the proposed new disclosure statement would also highlight the fact that charges for electricity consumed by the tenant (if the tenant has a separate electricity meter) must be in accordance with the relevant electricity by-laws as exist from time to time.</p>		No amendment required. Community education will be undertaken.
PART 16 - MAINTENANCE AND SHARED FACILITIES OR PREMISES			
16.1	<p>Services and facilities promised by the park operator</p> <p>It is recommended that the RPLT Act be amended to give the SAT the power to make the following orders where a park operator has not provided services or facilities promised as part of pre-contractual negotiations:</p> <ul style="list-style-type: none"> • an order requiring the park operator to provide the facility or service (specific performance); • an order that the park operator pay the tenant compensation; • an order for a reduction in the rent payable; or • in circumstances where the tenant would not have entered into the contract had the tenant known that the facility or service would not be provided, an order rescinding (cancelling) the contract. 	✓	
16.2	<p>Ongoing maintenance and repair</p> <p>It is recommended that the RPLT Act be amended to impose an obligation on the park operator in relation to maintenance and repair and to give the SAT the specific power to make an order requiring that work be carried out as soon as is reasonably practicable and to a standard that is reasonable in the circumstances. The SAT would be required to take into account the age, character and prospective life of the facilities. It may also be appropriate for the SAT to take into account the level of rent paid by tenants.</p>	✓	
16.3	<p>Transparency in relation to maintenance costs</p> <p>It is recommended that no annual reporting requirements be introduced in relation to expenditure on maintenance and capital.</p>		No amendment required.
16.4	<p>Funding of capital improvements</p>		No amendment required.

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED ⁹⁸		Implementation	
		Bill	Other
	It is recommended that no mechanisms be included in the RPLT Act for the funding of capital improvements.		
	PART 17 - SALE OF HOMES		
17.1	<p>The right to sell a home while it is situated on the park</p> <p>It is recommended that the RPLT Act be amended to provide home-owners with a right to sell a home on-site. This right would not be able to be excluded or limited in the long-stay agreement. Tenants would be required to notify the park operator before offering the home for sale and would be required to comply with reasonable restrictions regarding display of 'for sale' signs (for example, size and location).</p>	✓	
17.2	<p>Interference in sale by park operator</p> <p>It is recommended that the RPLT Act be amended to prohibit a park operator from interfering with or hindering the sale of a park home by a home owner.</p>	✓	
17.3	<p>Useful life of a park home</p> <p>It is recommended that the RPLT Act be amended to impose an obligation on the seller of the home to advise of the date of manufacture. It is proposed that a standard information sheet be developed for use on the sale of a home. This document would include key information about the home (including the date of manufacture) and would be provided by the seller or their agent to the purchaser.</p>		Information to be included in buyer disclosure document.
17.4	<p>Extent of park operator involvement in the sale process</p> <p>It is recommended that it is a condition of a sale between a home-owner and a purchaser that that the park operator consents to a lease agreement with the purchaser. The condition would not apply in those instances where a home is to be removed from the site following sale. If the park operator does not agree to enter into a tenancy agreement on reasonable terms, the purchaser would have the option of cancelling the contract. The park operator would be required to provide a copy of the proposed long-stay agreement and disclosure material to the purchaser prior to entry into the tenancy agreement.</p>	✓	
17.5	<p>Creation of tenancy rights for the purchaser</p> <p>It is recommended that the RPLT Act be amended to require a park operator to enter into a new site agreement with a purchaser. However, the park operator would not be required to enter into an agreement if the operator has reasonable grounds for declining or if the operator cannot reasonably reach agreement with the purchaser as to the terms of the site agreement.</p>	✓	

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED ⁹⁸		Implementation	
		Bill	Other
17.6	<p>Appointment of park operator as the selling agent</p> <p>It is recommended that the RPLT Act be amended to provide that the park operator is prevented from requiring a home owner to appoint the operator or a person nominated by the operator as selling agent. As noted in 15.1 above, the RPLT Act Regulations will be amended to remove the \$200 cap on screening fees and instead impose a 'reasonable' amount requirement.</p>	✓	
17.7	<p>Commission for park operator acting as selling agent</p> <p>No legislative change is recommended in relation to selling agency fees. The fees payable on the sale of a home are to be specified in the selling agency agreement.</p>		No amendment required.
17.8	<p>Fees payable to a park operator who is not the selling agent</p> <p>It is recommended that the RPLT Act and RPLT Regulations be amended to permit a park operator (who is not the selling agent) to recover reasonable costs incurred in relation to the sale of a home, including administration costs and out of pocket expenses.</p>	✓	Amendments to regulations also required.
PART 18 - PARK OPERATOR CONDUCT PROVISIONS			
18	<p>It is recommended that the RPLT Act be amended to provide that when determining a dispute under the RPLT Act, the SAT would be given the jurisdiction to consider the conduct of park operators and whether breaches of the standards set by the ACL have occurred.</p> <p>The SAT would be able to consider whether a park operator has:</p> <ul style="list-style-type: none"> made false or misleading representations; engaged in misleading or deceptive conduct; acted unconscionably; or engaged in harassment or coercion. <p>The power to consider these factors could be included by reference to the relevant provision of the ACL or by specific reference in the RPLT Act.</p> <p>The remedies available to the SAT would also be broadened to ensure that the SAT has the power to make all necessary orders in order to deal with issues of this nature. The RPLT Act will be amended to specifically provide that, in making any order for costs, the SAT may consider whether a party has acted frivolously or vexatiously in bringing or conducting proceedings.</p>	✓	Recommendation 18 provides that the RPLT Act is to be amended to specifically provide that in making an order for costs the State Administrative Tribunal may consider whether a party has acted frivolously or vexatiously. This amendment has not been made as this issue is dealt with in the State Administrative Tribunal Act 2004.

EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED ⁹⁸		Implementation	
		Bill	Other
PART 19 – PARK LIAISON COMMITTEES			
19	<p>It is recommended that the RPLT Act and RPLT Regulations be amended to require a park operator to establish a PLC in a park with 20 or more long-stay sites, but subject to the majority of tenants in the park supporting a PLC.</p> <p>The following additional requirements will also be included:</p> <ul style="list-style-type: none"> • that park operators and managers not unduly interfere in the PLC election process; and • nothing in the RPLT Act is to be taken to prohibit tenants from forming any social or other committee; however these committees cannot usurp the role of the PLC. 	✓	Amendments to regulations also required.
PART 20 – DISPUTE RESOLUTION			
20	It is recommended that the RPLT Act be amended to specifically include the power for the SAT to make an order declaring a provision in a long-stay agreement void if it is satisfied the term is harsh or unconscionable.	✓	
PART 21 – SEPARATE REGULATION OF LIFESTYLE VILLAGES			
21	It is recommended that the RPLT Act not include provisions that only apply to lifestyle villages and park home parks.		No amendment required.

APPENDIX 4

PRELIMINARY ANALYSIS OF POTENTIAL REGULATIONS UNDER THE BILL

Residential Parks – Regulations – Preliminary Analysis by Department⁹⁹

REGULATIONS				
Section	Requirement	Proposed regulations	Consultation issues	
5	Term used: long-stay agreement	s.5(2)(d) – an agreement is not a long-stay agreement if it ... is a prescribed agreement or class of agreement	Excluded agreements - none likely at commencement –consultation required.	Are there any types of agreements that should be excluded?
5A	Term used: residential park	s.5(2)(b) – the following place are not residential parks ... a prescribed place or class of place.	Excluded places - none likely at commencement –consultation required.	Are there any types of parks that should be excluded?
9A	Modification of Act by regulations	The regulations may prescribe that a provision of this Act does not apply to, or applies in a modified way to – (a) a long-stay agreement or class of long-stay agreement; or (b) a residential park or class of residential park.	Modifications for strata parks. Regulations will need to vary the application of the RPLT Act to deal with: <ul style="list-style-type: none"> • matters dealt with by strata titles legislation; • community aspects of park living that assume one owner such as: <ul style="list-style-type: none"> - park liaison committees; and - park rules. 	Consultation required with operators and tenants at strata parks to determine what changes are required.
10	Form of long-stay agreements	s.10(1) – a long-stay agreement must – (c) make provision for any prescribed information or other matter	Matters to be included in standard form agreement.	Proposed standard form agreement to be circulated to stakeholders for comment.
10A	Prescribed standard form long-stay agreement	s.10A(1) – standard form agreement may be prescribed	Standard form agreement to be developed, based on current schedules 1-4, but updated to include changes to standard terms.	

⁹⁹ Answers to written questions tabled at hearing held with DMIRS on 1 March 2019, Attachment B.

REGULATIONS				
Section	Requirement	Proposed regulations	Consultation issues	
10B	Particular terms of agreements	10(2)(b) - non-standard must not be a type of term prohibited 10(4) - regulations may prescribe a term that must be included	Prohibited terms Required terms	Are there any types of terms that: <ul style="list-style-type: none"> • must be included; or • should be prohibited.
11	Information for prospective tenants	s.11(1)(e) - another prescribed document	Additional disclosure documents to be prescribed – property condition report, details of voluntary sharing arrangement. Current section 11 lists required documents or information. Some of these will be prescribed; others will be included in the approved disclosure statement.	Consultation required to determine what information will be required.
12	Restrictions on amounts park operator may charge	s.12(1)(e) – permitted types of fees to be prescribed.	List of types of fees to be permitted. List of permitted fees currently prescribed - Reg 10 and Schedule 8: <ul style="list-style-type: none"> • visitors’ fees; • water consumption (if separately metered); • electricity consumption (if separately metered); • gas consumption (if separately metered); • telephone calls made by the tenant (if the tenant has a separate telephone line); • fees or charges for access to internet service provided by the park operator; • fees for gardening services provided to the tenant; • fees for storage services provided to the tenant; • fees for additional parking spaces provided to the tenant; • fees for the servicing of an air conditioning unit used by the tenant; • fees for the cleaning of the gutters on the tenant’s relocatable home; 	Consultation required. Are there additional fees that should be prescribed? Do any fees need to be clarified? Should any limits be introduced in relation to certain fees – for example, no visitors’ fees for bona fide carers.

REGULATIONS				
Section		Requirement	Proposed regulations	Consultation issues
			<ul style="list-style-type: none"> fees for screening prospective purchasers. 	
21	Security bond	s.21(2)(b) – pet bond – prescribed amount	Amount of pet bond – Residential Tenancies Act (RTA) is \$260 s.21(2)(c) currently provides for pet bond of \$100 or other prescribed amount (no amount is prescribed).	Should the pet bond be consistent with the RTA or remain at \$100?
32A	Park operator to pay long-stay tenant compensation because of relocation	s.32A(1)(f) – prescribed matter (for head of compensation).	Prescribed head of compensation – none likely at commencement.	
32M	Urgent repairs	s.32M(1) – essential service means a service prescribed as an essential service.	Essential services – By way of example, the Residential Tenancies Regulations (regulation 12A) includes: <ul style="list-style-type: none"> electricity; gas; water (including hot water); sewerage/septic; and refrigerator (if supplied with premises). 	Should any other services be included? Are there services specific to residential parks?
		s.32M(3) – timeframe for non-essential repairs – 48 hours or any longer prescribed period.	Longer period – not required at commencement.	
32R	Notice of intention before end of fixed term	s.32R(3) - Notice to be given within prescribed timeframe	Timeframe for giving of notice. Consider including different timeframes depending on the length of the term – for example, 180 days of the term is 5 years or more, 90 days for all other agreements.	Consultation required as to appropriate timeframe.

REGULATIONS

Section	Requirement	Proposed regulations	Consultation issues
37	Form of default notice	s.37(c) – default notice must include prescribed information.	<p>Default notice currently prescribed (must contain info but not required to be in form) - Reg 12 and Schedule 9</p> <ul style="list-style-type: none"> • operator details • tenant details • residential park and site details • details of breach (nature, date and how breach may be remedied) • key dates – when breach must be remedied by and date of notice; • signature of operator • notes – setting out purpose of notice and steps tenant must take <p>Prescribed information for default notice may need to be revised.</p>
38	Form of notice of termination	s.38 - notice of termination (a) – to be in approved form (b) – to contain prescribed information	<p>Termination notice currently prescribed (must contain info but not required to be in form) - Reg 13 and Schedule 10</p> <ul style="list-style-type: none"> • operator details • tenant details • residential park and site details • details of breach (nature, date and how breach may be remedied) • key dates – vacant possession by and date of notice; • signature of operator • notes – setting out purpose of notice and steps tenant must take <p>Prescribed information for default notice may need to be revised.</p>

REGULATIONS			
Section	Requirement	Proposed regulations	Consultation issues
47A	Application of Division	s.47A – Division (relating to abandoned goods) to apply to tenant’s goods other than tenant’s documents and prescribed goods.	Excluded goods – may need to exclude caravans covered by the <i>Caravan Parks and Camping Grounds Act 1995</i> .
48	Disposing of goods abandoned by tenant	s.48(4)- Notice of abandoned goods to be – (a) in approved form; and (b)(i) made publicly available in prescribed manner	Way in which notice to be made publicly available. To be consistent with the Residential Tenancies Regulations – Reg 12D <i>“...a notice is made publicly available in the prescribed manner if it is published in a newspaper circulating generally throughout all, or most of, the State.”</i>
54A	Park operator may make park rules	Rules to be made in accordance with regulations made under this Division.	Consistent process for making rules in the first instance (if there are tenants at the park) and amending the rules.

REGULATIONS

Section	Requirement	Proposed regulations	Consultation issues	
54B	Regulations may provide for matters in park rules	<p>Regulations may prescribed matters that:</p> <ul style="list-style-type: none"> • must be in park rules 	<p>Required rules.</p> <p>See current Reg 20 - Park rules must provide for the following matters:</p> <ul style="list-style-type: none"> • restrictions on the making of noise; • parking of motor vehicles; • conduct and supervision of children; • use and operation of common facilities; • storage of goods by tenants outside the agreed premises; • park’s office hours; • cleaning of gutters; • tree maintenance; and • emergency procedures. 	<p>Is list of required rules and prohibited rules appropriate?</p> <p>Should other matters be added? Examples from other jurisdictions of matters that <u>may</u> be included in rules include:</p> <ul style="list-style-type: none"> • pets • speed limits • disposal of refuse • carrying on of sporting and other recreational activities • guests or visitors • maintenance standards for dwellings (as they affect general amenity of park) • landscaping and maintenance of sites • age restrictions (over 50)
		<p>Regulations may prescribed matters that:</p> <ul style="list-style-type: none"> • must not be in park rules 	<p>Prohibited rules.</p> <p>Consider other jurisdictions.</p>	<p>What types of rules should be prohibited.</p>

REGULATIONS

Section	Requirement	Proposed regulations	Consultation issues	
54C	Making and altering park rules	<p>Regulations may prescribed the manner a park operator must make or alter park rules</p>	<p>Recommendations (page 50 D-RIS):</p> <ul style="list-style-type: none"> • all long-stay tenants will be provided with the proposed change to the park rule/s and have the opportunity to object; and • to limit the opportunities for a vocal minority to dominate decision making, only park rules that have been objected to by a threshold percentage of tenants will need to be subject to further consultation with the park liaison committee and affected tenants; and • to reduce unnecessary administrative impacts, any park rule changes required due to legal or licence requirements will be excluded from any consultation requirements, for example park rules relating to matters that require urgent attention, such as health and safety, compliance with local government licence requirements, compliance with reasonable head lease contractual requirements, compliance with the RPLT Act or RPLT Regulations or any other written law. <p>Manner for making and altering park rules – current Reg 21 sets out the method for amending rules. Notice requirements, but no opportunity to object.</p> <p>Example – Manufactured Homes Act (Qld) ss 78-82 includes concept of threshold number of tenants.</p>	<p>How should process for change of rules operate? What degree of consultation is required?</p>

REGULATIONS				
Section	Requirement	Proposed regulations	Consultation issues	
57	Tenant may appoint a selling agent	s.57(1)(b) – selling agency agreement to comply with prescribed requirements.	Requirements for selling agency agreements. Look at requirements of general real estate legislation.	What matters should be included in selling agency agreements.
57A	Selling agent's commission and incidental expenses	s.57(1)(a) – incidental expense – includes prescribed expenses	Incidental expenses - none likely at commencement.	Consultation required – should any additional items be included as 'incidental expenses'.
59	Establishment of park liaison committee	s.59(1) – regulations to prescribed way in which vote to be undertaken about establishment of park liaison committee.	Way in which vote to be undertaken about establishment of park liaison committee. Consider including options so that operator has flexibility	
60	Constitution of park liaison committee	s.60(3) – regulation may prescribe the way the tenant reps on park liaison committee to be chosen.	Manner in which tenant reps chosen – currently the Commissioner's guidelines on park liaison committees sets out suggested procedures.	What issues have arisen under current processes? How can these be addressed?
91	Service of documents	s.91(1)(c) – document may be given or sent by electronic means in accordance with regulations – in circumstances specified in regulations.	Electronic means – manner of giving notice and circumstances in which may be given electronically.	
		s.91(3) – document to be made publicly available in way prescribed.	Manner in which document to be made publicly available.	

REGULATIONS				
Section	Requirement	Proposed regulations	Consultation issues	
102	Requirements for holding security bond amounts	s.102(1)(a) – interest at not less than the prescribed rate.	Proposed provision based on current RPLT Reg 17	
		s.102(1)(b) – interest paid in accordance with the regulations		
		s.102(1)(c) - interest paid in accordance with the regulations		
		s.102(1)(d) – ADI may deduct prescribed fee.	ADI permitted fee – no fee currently prescribed under RPLT Act or Residential Tenancies Act.	
		s.102(1)(e) – security bond to be paid out in prescribed way.	Look at current RPLT Reg 18 and Residential Tenancies Act section 96.	
115	Transitional regulations	All matters required or necessary to be prescribed to deal with matters of a transitional nature.	Any transitional regulations required. Voluntary sharing arrangements in pre-commencement agreements to be valid notwithstanding that requirements of Act (such as specific disclosure) not complied with.	
	Infringement notices		Offences and penalties.	

GLOSSARY

Term	Definition
Act	<i>Residential Parks (Long-stay Tenants) Act 2006</i>
Bill	Residential Parks (Long-stay Tenants) Amendment Bill 2018
C-RIS	<i>Consultation Regulatory Impact Statement</i>
CIAWA	Caravan Industry Association Western Australia
Department	The former Department of Commerce
DMIRS	Department of Mines, Industry Regulation and Safety (formerly Department of Commerce)
EISC	Economics and Industry Standing Committee
FLPs	Fundamental Legislative Principles
PHOAWA	Park Home Owners Association WA Inc
SAT	State Administrative Tribunal
Supplementary Notice Paper	Supplementary Notice Paper No. 99, Issue No. 1 of 13 February 2019

Standing Committee on Legislation


Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'4. Legislation Committee

- 4.1 *A Legislation Committee* is established.
 - 4.2 The Committee consists of 5 Members.
 - 4.3 The functions of the Committee are to consider and report on any Bill referred by the Council.
 - 4.4 Unless otherwise ordered, any amendment recommended by the Committee must be consistent with the policy of the Bill.'
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