STANDING COMMITTEE ON LEGISLATION

RESIDENTIAL PARKS (LONG-STAY TENANTS) AMENDMENT BILL 2018

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
FRIDAY, 1 MARCH 2019

SESSION THREE

Members

Hon Dr Sally Talbot (Chair)
Hon Nick Goiran (Deputy Chair)
Hon Colin de Grussa
Hon Simon O'Brien
Hon Pierre Yang

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Hearing commenced at 12.32 pm

Mr DAVID SMITH
Director General, Department of Mines, Industry Regulation and Safety, sworn and examined:

Ms PENNY LIPSCOMBE
Director, Legislation and Policy, Department of Mines, Industry Regulation and Safety, sworn and examined:

Ms AMANDA BLACKWELL
Legal Policy Officer, Department of Mines, Industry Regulation and Safety, sworn and examined:

Mr TOM FILOV
General Manager, Legislation and Policy, Department of Mines, Industry Regulation and Safety, sworn and examined:

The CHAIR: On behalf of the committee I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witnesses took the oath or affirmation.]

The CHAIR: Thank you. You will have each signed a document entitled "Information for Witnesses". Have you read and understood that document?

The WITNESSES: Yes.

The CHAIR: These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record and please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them. Please try to speak in turn. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

I will just take you through how we thought we would proceed. Thank you for your responses to our 25 questions. That is very much appreciated; it helps us enormously. We, as you will know, have just had hearings with two of the stakeholders, which of course were public. Out of those hearings we have garnished a few questions that we would like to put to you that were probably not covered so specifically in our original 25 questions to you. I am going to ask you, first of all, if there is anything in your answers to our prepared questions that you would like to elaborate on or clarify. Once we have done that, I want to move to the four or five areas of questions that we now have for you that is perhaps phrased slightly differently from the original way we put them to you.

Mr Smith: Thank you, Chair. I am very happy to proceed on that basis. As you know, you have received our submission and our response to the supplementary questions that you sought and also, I think, some commentary on some of the other submissions that you had received. That has been

put together by Penny, Amanda and Tom to have ready for this hearing. I did not intend to make any other opening comment, but Penny, perhaps, might want to make some general comments at this point that might help that discussion.

Ms Lipscombe: I have prepared some opening statement that will set the scene, which I am quite happy to read.

The CHAIR: You are very welcome to go through that opening statement. I should indeed have asked you that and made that clear to you. By all means proceed with an opening statement then we will work on that basis that I just outlined.

Ms Lipscombe: Thank you very much. Again, I would like to thank the committee for the opportunity for the department to appear and answer the questions in relation to the Residential Parks (Long-stay Tenants) Amendment Bill and also note that we have made our written submissions. The bill amends the Residential Parks (Long-stay Tenants) Act 2006. This act regulates the contractual tenancy arrangements between a park operator and tenants living in a residential park. There are around 7 500 to 8 000 occupied residential park sites in Western Australia, housing approximately 15 000 residents. Residential parks provide sites on which relocatable homes can be placed. Tenants can either rent the site in the dwelling, or a tenant can rent the site and place their own dwelling on the site. Residential parks provide an important housing option for people looking for an affordable long-term secure and communal living arrangement. However, the unique aspects of this tenancy arrangement has given rise to contractual uncertainty and other issues for a class of tenants who are particularly vulnerable. Residents in residential parks are often older or on lower fixed incomes and may be reliant on government benefits or simply dependent on the security and companionship provided by the park community. Unlike other tenants, residential park tenants often own their dwelling and may have invested substantial sums in purchasing and maintaining their dwelling on the presumption that they would have the right to lease the land for a long period of time. Many of these tenants may be unaware that park operators have the right to terminate leases if a park is to be sold with vacant possession. Lack of adequate disclosure about the nature of this tenancy arrangement and handshake deals has exacerbated the issue, with some residents not understanding that they do not own the interest in the land on which their dwelling is located. Mobility is also an issue for these residents, as it is often very costly to physically move a park dwelling, and it may be difficult to find an alternative park to relocate to. Selling a dwelling can be challenging as it is a limited market with the value of the property primarily attributable to the land rather than the dwelling itself. The dwelling is usually depreciating in value. This can lead to a tenant feeling trapped into accepting a tenancy arrangement which is no longer affordable or suitable to their needs.

The sector itself has evolved in recent years from people living long-term in mixed-use caravan parks in a dwelling that was essentially a caravan with an annex, to the emergence of purpose-built lifestyle villages where dwellings can be expensive to purchase—for example, in the $400 to $500 000 range in some cases. They are difficult to move and the lease terms in these villages are up to 60 years. This change has heightened the need for greater disclosure and equitable contractual arrangements.

[12.40 pm]

The bill was developed to address these and other issues following an extensive consultation and review process. The written submission provided to the committee by the department deals with the extent of this process, which included the release of several consultation documents, including a discussion document in 2012, a consultation regulatory impact statement in 2014 and a statutory review report in 2015. In response to these papers, the department received and analysed 137 submissions and 875 survey responses. Several information sessions were held with park tenants

during 2014, with over 300 people attending. Telephone surveys were also conducted of all parks in Western Australia and there have been regular meetings with park operators, tenants and their representatives during the review process and drafting of the bill. Consultation has also occurred with relevant government agencies.

The final recommendations emerging from this process form the basis of the package of reforms set out in the bill. There have been three broad objectives underlying all these reforms—these being to increase the certainty of contract for tenants, ensure fair dealings between the parties, and promote sustainability of the sector. The key reforms aimed at improving certainty of contract include a new provision prohibiting the termination of fixed-term agreements on the sale of a park. Similarly, the bill will prohibit the automatic termination of agreements if a mortgagee takes possession of the park. Certainty of contract is also achieved by enhancing disclosure in relation to the nature of risks associated with the tenancy arrangement and the potential costs to the tenant. The bill promotes fair dealings between the parties by encouraging a level playing field and ensuring core rights and obligations are preserved. For example, a set of standard contract terms will be deemed to apply to all long-stay agreements and parties will no longer be able to contract out of these standard terms. A standard form agreement will also be introduced for new agreements so that tenants can more easily understand and compare contractual terms.

One of the overarching considerations in the review process is the need to ensure residential parks remain a sustainable housing option. This has meant that the need for reform is balanced against the requirement to support park operators by avoiding unnecessary regulation or unduly interfering with their ability to run a viable business. For example, during the review process, several respondents suggested that to provide residents with greater certainty, rent should be capped. As this reform could potentially stifle a park operator's business, it was not supported and instead the reforms enhance disclosure in relation to rent and other costs, including a new requirement for the park operator to provide worked examples of future rent and other costs, such as exit fees.

The bill provides State Administrative Tribunal with broader powers to make specific orders in relation to matters under an agreement, including the power to declare the term of an agreement void if it is harsh or unreasonable. It is anticipated that improved disclosure will reduce the incidence of dispute between park operators and tenants and alleviate the need for the tribunal to intervene. Other amendments in the bill have been made to improve clarity and understanding of rights and obligations, and where appropriate amendments have been made to ensure consistency with the residential tenancies legislation so that tenants are treated equitably, irrespective of the nature of the premises they lease. In the course of reviewing and drafting the bill, consideration has also been given to the legislation in other jurisdictions to ensure that regulation of residential parks in Western Australia represents best practice. The review and consultation process has revealed that while the reforms in the bill are broadly supported, there are still differing stakeholder views on a number of issues. There are some reforms that tenants and their representatives believe do not go far enough and some reforms that park operators and their representatives believe have gone too far. It is always a difficult task to please all parties, given the divergent and often opposing interests of park operators and tenants. Therefore, what the reforms in the bill represent is a carefully considered balance between the risks and benefits of reform for all parties and the industry as a whole. There are a number of broader issues related to land use, zoning and licensing requirements which can impact residential parks. However, these matters are beyond the scope of this bill. We believe the reforms contained in the bill are imperative for the residential park industry and go a long way to enhancing protections for vulnerable residents while supporting park operators to create a sustainable business and housing option. We are happy to answer any questions you may have.

The CHAIR: That is terrific. Thank you very much. Let me first of all clarify with you whether you are happy for the document you have provided us called "List of questions for hearing with Department of Mines, Industry Regulation and Safety, midday Friday 1 March, questions to be asked and answered at this hearing". It goes through the questions and your answers—the departmental response. Are you happy for that to be made public?

Ms Lipscombe: Yes.

Mr Smith: I believe so.

The CHAIR: And going through the attachments, attachment A is "Residential Parks (Long-stay Tenants) Amendment Bill 2018". Are you happy for that to be made public?

Mr Smith: The diagram—yes.

The CHAIR: The second one is "Residential Parks Regulations."

Ms Blackwell: That is, whether we need to wait until that is a little more finalised.

The CHAIR: Perhaps you would like to record that a private status.

Ms Blackwell: It is a very preliminary assessment.

Mr Smith: Perhaps at this stage, or if we could get back to you with a more considered view.

The CHAIR: All right. We will accord that a private status, but ask you to clarify that by the date I will give you at the end of this meeting when I close, which is basically 4 o'clock next Tuesday.

Mr Smith: Thank you.

The CHAIR: Attachment C is "Summary of Transitional Arrangements"

Ms Blackwell: That is fine.

The CHAIR: Public. And then the two documents which are your responses to the stakeholders—response to the Park Home Owners Association and the response to the Caravan Industry Association?

Ms Blackwell: Yes. But can we please amend the typo in the name of the department that is at the top of the document, which I noticed this morning.

The CHAIR: I am sure Alex will do that. The only document that we are not making public is the summary of transitional arrangements—attachment C?

Ms Blackwell: Attachment B—the regulations.

Mr Smith: I think it is attachment B—the regulation.

The CHAIR: I am sorry. Yes, you are absolutely right—the Excel spreadsheet. That is clear. Thank you.

I am going to start the ball rolling but I think this will be an occasion when all committee members will chime in with their own questions. The five areas we wanted to cover it with you are consultation, retrospectivity, periodic leases, the 15 proposals from the Caravan Industry Association, and the question of accreditation. If I can just kick off with consultation, Mrs Lipscombe, you mentioned an extensive consultation process. The Caravan Industry Association, as you would have heard in the previous hearing, said that they were not able to raise their 15 points with you until after the bill had gone through the Legislative Assembly.

Ms Lipscombe: That surprises me. We are open to hearing issues raised by stakeholders at any time. I would like to understand more why they hold that view.

The CHAIR: Our understanding is that you have now met with the Caravan Industry Association and you have got the 15 proposals that they put to you.

Ms Blackwell: Yes.

Mr Smith: Yes.

The CHAIR: Okay, I will come to that specifically in a minute. What consultation have you done on the bill and on the regulations?

Ms Blackwell: Penny detailed the consultation process that was undertaken in developing the policy behind the bill. That was the extensive process that involved—I have a pile here of the documents that were part of that consultation process. Groups such as the Park Home Owners Association and the Caravan Industry Association have been involved in that process from the very beginning, even in terms of assisting to identify those issues that needed to be consulted on. They provided submissions on a number of occasions at each stage of that review process.

[12.50 pm]

The CHAIR: And this was in developing the policy?

Ms Blackwell: In developing the policy behind the bill. In the process of drafting the bill, we actually arranged meetings—I guess you could call them workshops—with representatives of tenants and representatives of park operators, to go through a number of issues that we viewed as possibly being a little more technical or that could possibly be of significant concern to those groups as well. We sat down with them and discussed all of those issues. Stakeholders were not provided with a copy of the final bill before it was tabled in Parliament, as that is not our normal practice. However, I think it was introduced in about October of last year, so there was ample opportunity for stakeholders to come back and talk to us about some of the issues. We actually received some correspondence from the Park Home Owners Association about transitional issues and concerns they had, and we talked through those with them. Unfortunately, the Caravan Industry Association's concerns were not raised until a few weeks ago.

Hon NICK GOIRAN: You mentioned that a copy of the final bill was not provided to the stakeholders, because that is not the normal practice.

Ms Blackwell: Or a draft bill.

Hon NICK GOIRAN: So no copy of it went to them at any stage?

Ms Blackwell: No copy of the bill in the drafting process.

Hon NICK GOIRAN: You also mentioned that you had had a number of workshops, and the workshops were undertaken during the course of the development of the bill, so post-policy but pre-delivery to the Assembly. Is it possible to get on notice the dates of those workshops, who attended and what matters arose at those workshops?

Ms Blackwell: Sure.

The CHAIR: May I ask you to clarify what the bound documents are in front of you?

Ms Blackwell: There is a discussion paper that was released in August 2012. The purpose of that document was to highlight some issues.

The CHAIR: That is all right. We have a copy of that.

Ms Blackwell: Then there was a consultation regulatory impact statement, which went further into each of the issues. That is dated 2014. There is the statutory review report that was tabled in the Parliament, and the decision regulatory impact statement, which was attached to our submission. That outlines all of the policy positions in the bill.

The CHAIR: Thank you; that is excellent. We do have copies of all of those. Okay; so you have got your first question on notice there. What about the consultation on the development of the regulations?

Ms Blackwell: That has not yet commenced. We have worked on scoping what needs to be included in the regulations, but until we have that certainty from when the bill is actually passed, we are reluctant to commence that process. As soon as we have a little more certainty, we will start talking to stakeholders.

The CHAIR: Would the Caravan Industry Association and the Park Home Owners Association be involved in that consultation?

Ms Blackwell: Absolutely.

The CHAIR: Are there any further questions on consultation? No.

Let us go straight onto the 15 proposals from the Caravan Industry Association. You have now had those presented to you. Can you talk us through your reaction to them?

Ms Blackwell: I will just run through them in order.

The CHAIR: This is your document.

Ms Blackwell: I have got our response here.

The CHAIR: You have given us five pages on it.

Ms Blackwell: Yes. In response to expanding section 71A to include "repeatedly threatens or abuses a park operator", the department's response there is that the amendment is not supported at this stage. Section 71 of the act currently provides that a park operator can apply to the tribunal for an order terminating an agreement on the grounds that a tenant has intentionally or recklessly caused or permitted or is likely to cause or permit damage or injury. That is to the park operator, an agent of the park operator or any other person in the park. That section is not being amended by the bill. We consider that section 71 adequately covers circumstances where a tenant behaves in a threatening manner towards park operators and their staff.

Hon NICK GOIRAN: Supplementary to that, then, I understand that you are saying that section 71 is presently sufficient, but what would be the concern of extending the scope of the quiet enjoyment provision to workers?

The CHAIR: To staff who are employed.

Hon NICK GOIRAN: That is what they are asking for.

Ms Blackwell: There possibly is a small gap in that legislation where we would need to examine it closely and make sure that there are adequate safeguards to ensure that that power is not used inappropriately. Can we take that question on notice? We need to examine what happens in other jurisdictions and whether any problems have arisen in relation to it.

Hon NICK GOIRAN: It is not immediately apparent to me why a worker who is effectively living on site for a period of time—it was described to us earlier in one of the hearings that that might be a matter of a few days; they might do a shift and be there for a few days—should not benefit from living there with quiet enjoyment and why they should be a lesser class of temporary resident compared to somebody who is there all the time. It seems to me that everyone who is living there or staying overnight should enjoy their residence in peace and quiet.

The CHAIR: And then there is an additional category of staff who do not live there, so they would not be classified as residents and yet they are copping some fairly distressing —

Ms Blackwell: Section 71 that is already in the act provides protection to agents of the park operator in terms of injury or threats of injury. That already covers a fairly broad spectrum.

Hon SIMON O'BRIEN: The proposal for an amendment to proposed section 71A is about a tenant who repeatedly threatens or abuses the operator or an operator's employee, so it is a bit different, isn't it?

Ms Blackwell: I guess; maybe by degree. As I said, we can take that question on notice.

The CHAIR: You can see what our concern is, can't you?

Ms Blackwell: Yes, absolutely.

The CHAIR: If you could get back to us on that one. That is question on notice 2.

Hon SIMON O'BRIEN: There is a presumption here that the Caravan Industry Association had a reason for this, for what is a fairly minor thing, I would suggest. I do not know whether it needs to be vigorously opposed by government. It perhaps adds a dimension which closes a gap which the industry has perceived exists and is not already fully dealt with by existing section 71.

Hon NICK GOIRAN: Because section 71 at the moment deals only with injury.

The CHAIR: Not threats.

Hon NICK GOIRAN: It does not deal with quiet enjoyment. So if a nuisance resident is blasting their music right next door to the agent's residence and the proximity of those two places is such that it is really affecting only that agent—everyone else is not bothered by it—that is not an injury.

Ms Blackwell: Yes.

Hon NICK GOIRAN: But you will take it on notice and let us know what the problem is.

The CHAIR: The second one is section 10C.

Ms Blackwell: The department does not support this amendment. We are of the view that, as currently drafted, the clause would mean that tenants would continue to be bound under the terms of the original agreement in line with general contractual principles. They have entered into that agreement and that agreement continues, so they will continue to be bound as a party to the agreement.

[1.00 pm]

Hon NICK GOIRAN: It is unnecessary.

Ms Blackwell: Unnecessary. In discussions with Parliamentary Counsel, he was of the view that it may actually confuse the application of that provision. The proposed wording to preclude verbal agreements, that would preclude action by the tenant to enforce verbal agreements. While it might be preferable for terms of an agreement to be in writing, this is not always the case. We would not want to unnecessarily restrict a tenant's rights to try to enforce something that perhaps they had been promised.

The CHAIR: Next one?

Ms Blackwell: The restrictions on the amount the park operator may charge: once again, this amendment is not supported. Generally in relation to long-stay agreements, the rent is intended to cover most of the costs of running a park and would include a profit component. However, the Residential Parks (Long-stay Tenants) Act and regulations permit an operator to charge fees for some additional facilities or services. At the moment, they include things such as visitors' fees, consumption of utilities, gardening services, storage services, additional parking spaces, some servicing of air conditioners, cleaning of gutters and screening of prospective tenants. The statutory review recommended that the cost-recovery principle be applied in relation to these permitted additional fees. That is aimed at making sure that when these costs are separately passed on to tenants that is where little of any value is added by the operator in relation to these types of fees.

Section 12 implements a recommendation about introducing this cost-recovery principle because I am sure when you would have heard from the tenant representatives earlier today and in their submissions, a number of them are on fixed incomes and any additional costs that they cannot assess before they enter into an agreement really do impact on their ability to viably live in a park.

The amendments proposed by the Caravan Industry Association are contrary to this review recommendation and would likely create uncertainty and could potentially result in tenants paying increased costs that they cannot actually afford. It should be noted, though, that proposed section 31 of the act will make provision for increases in rent due to unforeseen costs in running a park and there will be a process that has to be applied in being able to use that provision.

The CHAIR: I am just going to give the call to Hon Simon O'Brien, who I think has a follow-up point on this.

Hon SIMON O'BRIEN: I think in listening to Ms Blackwell's explanation, I am managing to reconcile what seems to be irreconcilable. Is the government process in considering this matter about looking at non-negotiable costs that are included in the contract; for example, a tenant would be required to pay an ongoing service fee, perhaps monthly, for things, including gutter cleaning, leave raking and those things you mentioned, is that the idea there?

Ms Blackwell: Section 12 refers to any payments made in relation to the long-stay agreement, so it is those fees that are linked into as you said, so they are non-negotiable—not fees for services that may be elective or an added bonus.

The CHAIR: Window cleaning, for example would not come into that.

Hon SIMON O'BRIEN: Yes.

The CHAIR: Gutter cleaning would, but window cleaning would not.

Ms Blackwell: We are talking about the fees that the park operator —

The CHAIR: I was just saying that window cleaning would not be included but gutter cleaning would.

Ms Blackwell: As part of the consultation in relation to the regulations. Because these are a prescribed set of fees, there will be consultation to determine which fees are included and/or not included in that list. But by way of example, the department sometimes receives complaints from tenants who say that they are charged a $10 fee for reading their meters. Now those fees are not permitted under this sort of provision. That is the mischief that the provision is squarely aimed at preventing from happening.

Hon SIMON O'BRIEN: That is very helpful. Thank you for that. It was the intent of this proposed section that we wanted to get to. The industry has a view, I think from the evidence they gave earlier, that this was an imposition on ad hoc services that might be required. For example, someone wants to get their windows cleaned and the industry, I think is of the view, "Well we can provide this service, generally, and if the tenant doesn't like what we are going to charge, they can go to the window cleaning service in town and they could come out." So they make their own decision but that is not what you were talking about, is it?

Ms Blackwell: It is the fees that are sort of linked into the services provided in the park—visitors' fees and utilities fees can only be charged on a consumption basis without a profit component added by the park operator.

Hon SIMON O'BRIEN: So the argument, of course, of caravan park owners is that if it is a case that they can only do true cost recovery for ad hoc services, they are probably not going to bother providing those services, so the tenants would miss out. With what you have told us, it is a different purpose contained in proposed section 12. My question, to wrap this bit up then, is: will section 12 also apply to those sort of ad hoc services that might be made available from time to time rather than ones that are captured by the lease?

Ms Blackwell: Where a tenant has the option of whether to use a service or not?

Hon SIMON O'BRIEN: Yes.

Ms Blackwell: Can I take that question on notice and get back to you; I suspect, I will have to just —

Hon SIMON O'BRIEN: That will be fine.

The CHAIR: Question on notice 3.

Hon NICK GOIRAN: Further to that, when you are taking that on notice, can you particularly have a look at the wording of section 12.1. There it is talking about a park operator must not require or receive from a tenant money in this form unless it is rent and so on and so forth. It seems to me that the problem is the use of the words "or receive". It is quite fair enough what you are saying in terms of a park operator not requiring a person to pay for those things, but if a tenant voluntarily decides to give a park operator some money, it is not clear to me what would be the problem with the park operator receiving that money. If you can just consider that when you come back to us, that would be great.

The CHAIR: Thank you. Let us go on to section 20A.

Ms Blackwell: This the provision about the ongoing disclosure obligation. Once again, the department is of the view that this amendment is not necessary. 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 change that would affect the tenancy, so is likely to affect the tenant's use and enjoyment in relation to the park.

Hon NICK GOIRAN: This was one where I think the amendment that was proposed from the Caravan Industry Association was very small. It is a change to section 20A. They were looking at the insertion of a phrase "and which is materially likely to occur." I understand the department's position that it is not necessary—but would it be harmful if the proposed amendment were put as suggested by the Caravan Industry Association? I respect what you are saying that it may not be necessary, but would it be harmful? Would it create some unintended consequence that we should be mindful of?

Ms Blackwell: Whether it would create some uncertainty in terms of determining what is meant by "materially likely to occur", we may need to seek advice from Parliamentary Counsel as to whether that could have any unintended consequences.

The CHAIR: Can you take that on notice?

Ms Blackwell: Yes.

Hon NICK GOIRAN: Please note that at 20A(1), the government's proposed amendment in the bill, it does give examples of material changes.

Ms Blackwell: Yes. I think that amendment was included. We did discuss this issue with park operators as part of the consultation process as to exactly what we were talking about and providing examples so that they would understand that to narrow it down to a material change.

[1.10 pm]

Hon SIMON O'BRIEN: Can I offer some further feedback, which might help. The words that are proposed to be added, "and which is materially likely to occur", perhaps that is already contained intrinsically within it, because, at first glance, the caravan industry is concerned that there is always a prospect that there could be the sale of a caravan park—if a good offer came next week, yes, there is always a possibility. But unless it is materially likely to happen—that is, they are about to put the place up for sale, for example—why would we want to go and frighten the horses? We have got 200 aged residents here. Unless it is materially likely to happen, do we really want to trigger this requirement that we go around telling them what it would mean to them?

Ms Blackwell: If you are looking at proposed subsection (2), which talks about when the requirement to notify is activated, that is when a park operator becomes aware of that material

change. That notion that it is actually material or likely to occur is embedded somewhat in that subsection, because when they become aware of a change, that is when they have to notify.

Hon NICK GOIRAN: I just go back to my original question. I understand what you are saying about necessity. I am concerned about harm. If it does no harm to add these extra words and provides comfort to the caravan association, I cannot see what the difficulty is.

The CHAIR: So the department will seek advice from the drafters and come back to us as a question on notice. Thank you.

Let us go on to the amendment to section 21, "Security bonds". This is a separate amendment about keys and access to key bonds.

Ms Blackwell: This amendment has been made for consistency with recent amendments to the Residential Tenancies Act. One of the recommendations of the review is that, as far as possible and appropriate, there should be consistent provisions, rights and obligations across both of those acts. These sorts of costs may well be included as prescribed fees permitted under section 12. So we will consult on that as part of the consultation on the regulations. The ability to charge for a replacement key could be included as one of those fees and charges that has to be reasonable on a cost-recovery basis.

The CHAIR: We wonder whether you would draw a distinction between the provisions under the Residential Tenancies Act and the specific circumstances relating to people who have accommodation in residential parks. Clearly, there are substantive differences and the industry was very keen to point those out to us.

Ms Blackwell: Absolutely. In the assessment of what amendments should be made for consistency between both acts, that has certainly been taken into account. However, this is one of those instances where it certainly will not prevent an operator from recovering costs if a replacement key is required, but not necessarily requiring that bond up-front.

Hon NICK GOIRAN: If this is not addressed in the regulations, as the bill stands, there will be capacity to charge for a replacement key? Is that the advice?

Ms Blackwell: It will probably need to be included —

Hon NICK GOIRAN: In the regulations?

Ms Blackwell: — as the things that are allowed to be charged, because it will be one of those fees that is linked to the —

Hon NICK GOIRAN: This strikes me as an example of one that absolutely would have to be in the regulations. So if it is that crystal clear, maybe we should have it in the bill, rather than leave it to the regulations?

Ms Blackwell: As a fee that can be charged?

Hon NICK GOIRAN: The whole operation of this scheme falls away if you cannot have a key to get in.

Ms Blackwell: Are you suggesting that it be added to the fees and charges in section 12, or as a bond?

The CHAIR: You are removing it from section 21, so I think what Hon Nick Goiran is suggesting is: would you consider not removing it from section 21?

Hon NICK GOIRAN: Or find some other place in the legislation which then makes it clear that you can charge for a replacement key.

Hon SIMON O'BRIEN: It would appear that the owners are responding to the deletion of the reference to key bonds with this alternative, but not having regard for the fact that there is the capacity to charge a fee under the amended section 12 —

Ms Blackwell: There is a difference between a bond up-front that everybody has to pay and a fee that can be charged if a key is lost.

Hon SIMON O'BRIEN: Yes.

Hon NICK GOIRAN: I got the impression that was conceded by industry. They are relaxed about the bond, so long as they can charge for the replacement of a key. If we can put their mind at ease by putting that in the bill rather than leaving it to the possibility of regulations, it would assist.

The CHAIR: Do you want that on notice as well?

Ms Blackwell: Yes.

The CHAIR: We will wait for your response on that, thank you. I turn now to proposed section 32H, "Locks and security".

Ms Blackwell: The department is of the view that the amendment is not necessary. Proposed section 32H replicates the term that is currently provided for in the schedule. As part of the development of the bill, the act was restructured to provide some more clarity, so some provisions that were in the schedule were moved into the body of the act. There are no new requirements included in that section. Proposed section 32H(6) provides that a park operator must not breach the term "without reasonable excuse", and reasons of health and safety and emergency would certainly fall within the scope of "reasonable excuse". So, the department's view is that the amendment is not necessary.

Hon NICK GOIRAN: Has the department obtained advice to satisfy itself that health and safety would be interpreted under "reasonable excuse"?

Ms Blackwell: We sought advice from the drafter. He advised that he was of the view —

Hon NICK GOIRAN: Whatever advice was sought has not gone outside of parliamentary counsel?

Ms Blackwell: No.

Hon NICK GOIRAN: It is not something that you have gone to the State Solicitor on?

Ms Blackwell: No. We can certainly seek some further advice or clarification on that if necessary.

The CHAIR: Yes; we will put that on notice. I now move to proposed section 63C, "Recognising persons as long-stay tenants", which is about appeals to SAT.

Ms Blackwell: One of the recommendations of the review was that a provision of this nature be included in the act for consistency with similar provisions in the Residential Tenancies Act. The amendments are not supported. The proposed amendment to subsection (1) may unnecessarily narrow the application of that provision. Obviously, SAT would always take into account any relevant matter in making a determination under that section, including whether the park operator had given consent or gives consent to a person living at the park. But in some circumstances it might be that somebody moves into the premises through an emergency or another reason, so we do not want to unnecessary restrict the application.

The CHAIR: Would SAT also have to take into account the criteria of the park?

Ms Blackwell: Absolutely. In the proposed amendment to subsection (5), there is a reference to looking at the park operator's usual criteria. A broader reference is used in that section as to whether the resident is "suitable" for the park. It does not necessarily narrow it down to the park operator's criteria—in some instances, they may not have a formal criteria—but any criteria would be taken into account by the tribunal. That is the intention of that provision.

[1.20 pm]

Hon NICK GOIRAN: Are there any rights of appeal from an order from SAT in these circumstances?

Ms Blackwell: I imagine that is, on matters of law, the normal rights to appeal a SAT decision.

Hon NICK GOIRAN: Would this capacity to go to SAT to be recognised as a long-stay tenant apply to a person in the circumstances of an agreement which already exists at the moment or is this going to apply only to new agreements post-commencement?

Ms Blackwell: I might have to take that question on notice to double-check the transitional provisions. I will take that on notice; I will not answer.

The CHAIR: That question is on notice.

Moving on, the section on particular terms in long-stay agreements.

Ms Blackwell: I think we may have already included an answer to that question in our longer answer to that question, in comments in our response to you. Section 10(b) of the current act provides that a long-stay agreement must "include such clauses, if any, as are prescribed". So there is already a power in the act to prescribe certain clauses that must be included in the agreements, and any regulations made pursuant to this or any other provision are generally made in consultation with industry and subject to regulatory impact assessment processes and disallowance by the Parliament. The proposed amendment CIAWA has suggested is covered in new section 10B(2)(b) anyway. The intention of this section is to allow for some flexibility and an ability to ensure that agreements are suitable for the market, and any issues that arise really. It may be determined that a provision of this nature should be included in all agreements and, similarly, other provisions that are prohibited.

Hon NICK GOIRAN: When you say it is already included, where is that in section 10B?

Ms Blackwell: In the current act, section 10(b), or are you talking about the amended provision that the Caravan Industry Association has suggested?

Hon NICK GOIRAN: They want a provision to prescribe terms, permitted terms.

Ms Blackwell: There is section 10B(2)(b), a non-standard term "must not be of a type of term prescribed for this paragraph as a prohibited term". So, the amendments will mean that there can be terms that are prescribed that should be included in agreements and ones that are prohibited from being included in agreements.

Hon NICK GOIRAN: Are you saying that the caravan association's proposed amendment is already captured by section 10B(2)(b)?

Ms Blackwell: Yes.

The CHAIR: Section 20, "Age-restricted residential parks".

Ms Blackwell: This proposed section restates current schedule 1, clause 9. That section permits an operator to include a clause in an agreement restricting the ability of children to live or reside in a park. Normally, the general principles are that you are not allowed to refuse to provide accommodation or rent to a person because they have children who will be living in a park. However, it is recognised that this market has age-restricted parks, so that provision simply provides that where the park is an age-restricted park—and that means every agreement in the park or the part of park that is age-restricted has to include a limitation in relation to children. A long-stay agreement itself may include the word "ordinarily", but this word is not necessarily in the bill and may unnecessarily actually restrict the application of that clause and restrict the types of clauses that a park operator can include in their agreement.

The CHAIR: So you are confident that situations will not arise where children, for example, cannot go for school holidays or something similar?

Ms Blackwell: It would depend on the circumstances, what is in the actual long-stay agreements themselves. This provision is simply relating to what types of terms a park operator can include in their agreement or not; it is not necessarily talking about when children can go and stay at a park. So, the provision is aimed at saying that if you wish to include a term in a long-stay agreement, or if you wish to restrict who can live in a park to people of a certain age, you have to do it in this way. So you cannot refuse to allow children to live in a park, unless you meet the requirements of that provision. It is aimed at allowing park operators to include a provision in their agreement to restrict access for children where it is an age-restricted park, where that park is aimed at people of a certain age, but, at the same time, ensuring those other protections apply so that people who have children are not refused accommodation at a park in other circumstances.

Hon NICK GOIRAN: Has that response that you have just given been delivered to the caravan parks association, and have they conceded the point?

Ms Blackwell: In our meeting, I think —

Mr Filov: It was part of the discussion, but they obviously still hold a view that an amendment is required.

The CHAIR: Moving on to section 8(2).

Ms Blackwell: The purpose of this amendment is to provide clarity as to which acts should apply in relation to a proposed facility or a particular facility. If it falls within the definition of a retirement village under the Retirement Villages Act, then that act with its greater regulatory oversight should apply. This amendment clarifies that if a facility is regulated by the Retirement Villages Act, then the Residential Parks (Long-stay Tenants) Act does not apply. It is highly unlikely there will be overlap between the types of facilities. The definition of a retirement village scheme requires payment of a premium by the resident for admission to the scheme. That type of fee is not permitted under the Residential Parks (Long-stay Tenants) Act. This is simply clarifying that the two types of facilities are meant to be separate. I guess if there is a grey area in relation to a facility, which there should not really be, and it falls within the scope of the Retirement Villages Act, that act should apply. Also, the definition of "lifestyle village" is deleted by the bill so the amendment proposed by the Caravan Industry Association may not actually work properly in these circumstances.

Hon NICK GOIRAN: But it could work if we did not delete the definition?

Ms Blackwell: The definition of "lifestyle village" is relatively uncertain. It states —

> … means a caravan park, or an area within a caravan park, that includes long-stay sites that are occupied, or intended to be occupied, solely or principally by individuals having a particular interest or quality in common;

Hon NICK GOIRAN: In what section do I find that?

Ms Blackwell: That is in the glossary, which is being deleted. That clause is at the very back of the bill. We are reshuffling the definitions as well to provide more clarity.

Hon NICK GOIRAN: But that definition in clause 1 of the glossary for "lifestyle village", could it be brought into section 3 of the act, under "Terms used"?

Ms Blackwell: It possibly could be, but I do not know that it adds much clarity.

Hon NICK GOIRAN: It would still be grey in any event, is what you are saying?

Ms Blackwell: Possibly, yes. I think the policy position is if a facility could be defined as or falls within the definition of a retirement village, it should be regulated by that act, rather than excluded from the application of the Retirement Villages Act and regulated by this act.

The CHAIR: Moving on.

Ms Blackwell: The prescribed standard form agreement—park operators will not be prevented from using their own agreements and will continue to have the flexibility to include their own special conditions in their standard form agreements. But these will need to be specifically identified and cannot be inconsistent with the terms of the standard form agreements or with the act. These agreements will be developed in consultation with park operators and long-stay tenants. Standard agreements are used in Western Australia in relation to residential tenancies. New South Wales has standard agreements in relation to its residential parks legislation. It is anticipated that the agreements will be set up so that they can be quite easily used, adopted and adapted by park operators for their own circumstances. But it will mean that tenants, when they are looking at an agreement, will have the ability to say, "This part of the agreement is what is in the act and what my rights and obligations under the act are. These are the special conditions that this particular park operator has introduced and I need to look closely at those provisions and maybe seek legal advice on those particular provisions."

[1.30 pm]

The CHAIR: Section 32N.

Ms Blackwell: We may need to take this question on notice because the proposal is consistent with the Residential Tenancies Act changes. We have requested some further information from the Caravan Industry Association about this. That came through yesterday and I still need to seek some further information.

The CHAIR: That is another question on notice. Section 57B?

Ms Blackwell: Proposed section 57B replicates a section that is currently in the act, section 58(1). In redrafting provisions, parliamentary counsel has renumbered and simply restated some of the provisions.

The purpose of the exclusion from the licensing requirements—if a park operator is acting as a selling agent, they could be selling the home, the building, or in some instances they could be classed as a motor vehicle if it is a caravan as well. So there is an exclusion that provides that the park operator who acts as a selling agent is not required to be licensed, but that is a small component of their overall business. However, if a separate entity operates as a selling agent, it is not necessarily appropriate for that exclusion from licensing to apply because they are a separate entity from the park operator and if their predominant business is selling—acting as a real estate business agent—they should be licensed as such.

The CHAIR: This is perhaps the place to raise a broader question about accreditation. Do any of my colleagues want to take that up? There is a view that you will be aware of amongst the Park Home Owners Association that the industry needs professionalising. I suppose that would be the shorthand way of encapsulating their concerns.

Ms Blackwell: That was not an issue that was considered and consulted on as part of the review, so there have been no recommendations in the review about that. We are aware that the Park Home Owners Association has raised that as an issue—educational requirements or licensing requirements, is it?

The CHAIR: Generally—yes, both of those.

Ms Blackwell: That sort of proposal would probably need to be subject to an appropriate regulatory impact assessment process to determine whether it actually is in fact appropriate. Parks themselves are not registered or licensed as residential parks with the department. Most of them are licensed as caravan parks under the caravan parks and camping grounds legislation. We would need to undertake that review process separately.

The CHAIR: In your view, that is a bigger question over and above the purview of this bill?

Ms Blackwell: It is a much bigger question than what we can include in the bill.

Mr Filov: It probably brings into question developments through training packages and so on, whether those formal requirements would need to be implemented and developed through registered training organisations and so on to deliver appropriately qualified training.

Ms Blackwell: Certainly as a part of the rollout, when all the amendments are put in place. An issue that we have identified is that perhaps park operators need some assistance in understanding what their obligations are under the legislation and how processes are meant to work. We will certainly be working to provide education and assistance to operators. We have also have a proactive compliance team who head out to parks and work with operators to ensure that they are compliant with the act. But the parks market is very broad and I am assuming that you often would have managers who perhaps come and go, so there may be some difficulties, especially in regional and remote areas.

The CHAIR: The last two—section 62D and section 42?

Ms Blackwell: "Orders in relation to park operator's representations". Section 62D is intended to give the tribunal broad powers to make any orders that it considers appropriate in the circumstances of the case. The proposed amendment put forward by the Caravan Industry Association would fetter the tribunal's discretion in that regard. The tribunal already has the power to order specific performance under section 62(4)(b). This is not including a new power for the tribunal but it is just clarifying that it would apply in those certain circumstances.

The CHAIR: Finally, section 42?

Ms Blackwell: "Termination without grounds". This is one of the specific issues that we did engage in consultation with both the Caravan Industry Association and the Park Home Owners Association. The amendments that are proposed are not supported. The current ability to terminate without grounds is actually restricted to a degree by section 68(4) of the act which provides that in determining an application for vacant possession, the tribunal must be satisfied that terminating the agreement is justified in all the circumstances. There is already a requirement that termination should be justified. The proposed amendments are aimed at providing clarity by outlining the circumstances in which termination is justified and setting out some clear processes, including some requirements for the provision of evidence in some instances. This is a key amendment proposed by the bill and will provide greater certainty and fairness to tenants. It should also provide some certainty to park operators who can be assured that in those circumstances where perhaps they are closing the park or they are redeveloping a park, that they have sufficient grounds for terminating an agreement and there are processes in place.

We are of the view the new sections will provide adequate grounds for termination. They are whether the park is to be closed or redeveloped; the site is required to undertake works; the site is to be used for a different purpose. That might be where a park is shifting from a long-stay focus to more of a tourist focus. Once again, we have introduced the provision about where a tenant has repeatedly interfered with the quiet enjoyment of the park by other tenants.

In developing these proposals, we examined other jurisdictions. We analysed what sorts of provisions were in place in those jurisdictions to come up with a comprehensive set of grounds for termination. You couple those with the ones that are already in the act relating to where a tenant has breached the agreement as well. You have grounds where maybe the tenant has done something wrong; where the park operator wants to use the park or the site for a different purpose; and then there is a standard set of termination provisions for things such as frustration and undue hardship. As a package we are of the view that everything should be covered.

The CHAIR: Thank you. That is a very thorough analysis of those 15 points. I do appreciate that.

The other two areas that we wanted to canvass with you are, I guess, intrinsically linked. There is the whole question about retrospectivity and then there is the specific question about periodic leases. I am not sure how members would like to tackle this. Perhaps we could get you to start by talking about the fact that the bill appears not to countenance periodic leases.

Ms Blackwell: In terms of?

The CHAIR: Are periodic leases recognised by the bill?

Ms Blackwell: Periodic leases are definitely recognised by the act.

The CHAIR: When it comes to the question about retrospectivity, you will know that the Park Home Owners Association is saying that a large section of its membership is not covered by the new provisions because they are on periodic leases.

Ms Blackwell: No, that is not correct. The majority of amendments will apply to all long-stay agreements. They will apply to all residential parks but they will apply to all long-stay agreements. We have undertaken a very careful assessment as to what provisions should and should not apply. In our more comprehensive document with our answers to your questions, there is an outline in response to 1.20 setting out the principles that were applied in determining whether or not amendments should apply to existing agreements. Do you want me to quickly run through the thinking behind that? I will not read the whole thing out because that would be —

The CHAIR: At 1.20 on page 10?

[1.40 pm]

Ms Blackwell: Yes. There are four types of agreements under the residential parks act: site-only agreements where the tenant brings their own home. They can be periodic or fixed term. Some have a very, very long fixed term. In our submission, we have set out some data that gives you a split as to how the tenancies are distributed. Parks that are long–stay only parks tend to have more fixed-term agreements, and parks that are mixed-use parks—that combination of tourist and residential—often will offer only periodic agreements. Then you will have your onsite homes which are where you rent the home and the site. They are more akin to your normal residential tenancies because if a tenant has to pick up and move, they just need to pack their belongings; they do not have to incur the cost and time involved in moving a home. Once again, they can be fixed term or periodic.

In looking at the transitional provisions, we examined what the amendments were doing. Any new prospective obligations that will require park operators or tenants to do something going forward will apply to all agreements. So, things like the requirement to provide tenants with notices to whether or not they intend to renew a fixed-term lease or the continuing disclosure obligations, or the obligation for a tenant who is selling their own home to give a potential buyer a notice letting them know about the nature of the agreement. All of those sorts of obligations will apply to everybody from commencement date.

In relation to contractual obligations, any new provision, other than the standard terms, which we dealt with separately, that would have the effect of altering any contractual rights and obligations that have been negotiated and settled, they will only apply to new agreements entered into after the amendments come into effect. The provision prohibiting market reviews only applies to new agreements. If there is a market review clause in an agreement at the moment, that clause will continue.

In relation to the formal content of the long-stay agreements, any form of contracting out of the standard terms will be prohibited. 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. They will apply to periodic agreements that are currently in place, so the tenants that the Park Home Owners Association are concerned about.

The standard form agreement—note that will only apply in relation to new agreements. We will not be asking park operators to rewrite every single agreement that is already in place.

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. Those members of the Park Home Owners Association who are concerned will be protected by that change. There is still an ability to terminate their agreement if the park operator has one of the other grounds that have been put in place, but the fear of a without-grounds termination will be removed.

At the moment, if a mortgagee enters into possession, the tenancy will terminate. For mortgages entered into after the commencement date, that will no longer be the case. However, for pre-existing mortgages, it was determined that it was not appropriate to necessarily change that sort of commercial arrangement.

In relation to sale of the park, currently a park operator can terminate a fixed-term agreement on the grounds that the park is being sold with vacant possession but the tenant gets compensation. What we heard in the review was that tenants did not think compensation was sufficient. What they actually really want is to be able to stay in a park for the full term that they had agreed to initially. That amendment will only apply in relation to new agreements because park operators have actually entered into agreements on the basis that they still have that flexibility to terminate if they sell the park, bearing in mind that they will be paying compensation.

We have gone through a careful assessment to try to determine which amendments are appropriate to apply to everybody and which should only apply to new agreements.

Hon NICK GOIRAN: One of the big issues for the Park Home Owners Association is the issue of termination without grounds. Is it the case under the current law that termination without grounds is permissible?

Ms Blackwell: Section 42 provides for termination without grounds. I think it is section 42. I will just double-check.

Hon NICK GOIRAN: That provision that exists at the moment will no longer be applicable to any arrangement post-commencement?

Ms Blackwell: It will only be applicable to onsite home agreements, so the one where the tenant rents their home and the site.

Hon NICK GOIRAN: That would apply to onsite agreements made post-commencement?

Ms Blackwell: Yes. But for site-only agreements, which is the primary concern about termination and the impact on tenants because they have to move the home when their agreement is terminated, it is limiting that ability to terminate without grounds to an actual specified set of grounds.

Hon NICK GOIRAN: That is clearly not understood, even as of this morning, by the Park Home Owners Association. Only a few hours ago, they were still pressing us on this issue. When will the department be communicating that to the park home owners?

Ms Blackwell: We have had some discussions and provided them with the little diagram with the attachment 3. We have developed that to provide to the Park Home Owners Association to tenants so they could have a bit —

The CHAIR: This one?

Ms Blackwell: No.

Hon COLIN de GRUSSA: This one?

Ms Blackwell: Yes.

The CHAIR: That is not very helpful to Hansard.

Ms Blackwell: To provide them with some information. Apologies, it is attachment 3.

The CHAIR: Attachment 3, "Summary of transitional arrangements".

Hon NICK GOIRAN: Whatever communication has occurred so far has been ineffective, is all I can say.

Ms Blackwell: We can certainly reach out to them again and maybe have a meeting and a bit more of a chat about how everything is to work going forward.

Hon NICK GOIRAN: Further to that, in terms of this whole issue of retrospectivity, is it the case that existing tenants under the current law can apply to SAT for relief for unfair rent increases?

Ms Blackwell: I think where some of the issues arise are in relation to market reviews of rent. Most other rent increases are set by a formula or a standard—by CPI, by a certain percentage, perhaps by a certain amount—but market reviews are a little uncertain, which is why we are removing the ability to include a market review provision. There is a decision of the tribunal where they reviewed a market review and made a determination as to the rent that should be payable in relation to that particular park. There is also a provision that permits a tenant to apply to the tribunal where the facilities have reduced or the amenities in the park have been reduced, to seek a reduction in rent as well.

Hon NICK GOIRAN: But under the new provisions, a person would be able to apply to SAT for relief for unfair rent increases?

Ms Blackwell: It is not a specific provision about unfair rent increases.

Hon NICK GOIRAN: Okay; but they can apply to SAT with a complaint about their rent?

Ms Blackwell: SAT has a broad power to make a determination—I am just trying to find the section—in relation to any dispute arising under or in connection with the agreement or any payment made or purported to be made under the agreement.

Hon NICK GOIRAN: Which could include a dispute about a rent increase, whether it is market review or otherwise. Would that capacity to go to SAT to complain about that be the case for all tenants or only people entering into an agreement post-commencement?

[1.50 pm]

Ms Blackwell: That provision actually is already in the act, with the broad power, and there has already been a decision of the tribunal in relation to a market review where they held they had —

The CHAIR: So it applies to existing leases?

Ms Blackwell: Yes.

Hon NICK GOIRAN: Again, the concern of the park home owners about those currently on periodic agreements not having the capacity to go to SAT is unfounded?

Ms Blackwell: I think so. I could certainly take that question on notice just to clarify that. I think I need to revisit the decision and see exactly what the tribunal said.

Hon NICK GOIRAN: If it is unfounded, certainly whilst the committee would appreciate hearing about it, I would imagine so would the park home owners.

The CHAIR: It is the second subject of communication with the park home owners.

Can I just put a scenario to you about people who wish to stay on the periodic lease? I do not know whether you were listening to the previous witnesses.

Mr Smith: I think we were outside actually.

Ms Blackwell: We could not hear it all, but we heard a little bit.

The CHAIR: It was a public hearing so we can refer to it now. They put to us specifically that a number of people who are currently on periodic leases would like to stay on periodic leases and that they may not be able to when the new provisions come in, because a park owner may go to them and say, "I don't want to do this anymore. I'm going to finish doing residential accommodation and move exclusively to tourists", and therefore Western Australia stands to lose that low-cost accommodation.

Ms Blackwell: Under the proposed changes, instead of the without-grounds termination, there will be an ability for a park operator who has a genuine intention to redevelop or change the use of a site to be able to do that and to terminate an agreement. They would be required to give the requisite notice of 180 days for a site-only agreement. In relation to some of the decisions of the tribunal about the current without-grounds termination and when that is or is not justified, there are actually decisions there where the operator is redeveloping the park and wants to use the site for a different purpose and often that is the tourist component.

The CHAIR: But could the park owner continue to offer periodic leases?

Ms Blackwell: Absolutely, yes.

The CHAIR: What is it—89 days?

Ms Blackwell: There is currently something of a loophole in the legislation where they are offering that because the definition of a long-stay agreement refers to a fixed-term agreement of three months or longer. It is our understanding that there are some agreements that are offered for 89 days fixed term and rolling, which would possibly circumvent the operation of the act.

The CHAIR: The existing act?

Ms Blackwell: The existing act, so the act is being amended to refer instead to where a person is using the park as their principal place of residence, to avoid that from happening.

The CHAIR: So, in your view, this is removing an existing loophole?

Ms Blackwell: Yes, absolutely.

The CHAIR: Do you know how many park home residents would currently be on that? What can I say? It is not that they are using the loophole, but their lease arrangements are being facilitated —

Mr Smith: On 89-day leases, for example.

Ms Blackwell: I am not aware of the number. We rang every park in Western Australia that would actually provide us with information. There are a few parks that we could not get hold of or who did not want to answer our questions. I was not aware of many that referred to 89-day fixed term, so they would be fixed-term leases.

The CHAIR: They might not refer to it if they get a query from the department and they are loopholing the act!

Ms Blackwell: No, not to us! There was one who did. But the amended act will contemplate the continued existence of periodic agreements and of fixed-term agreements.

The CHAIR: But a periodic agreement could not be for 89 days.

Ms Blackwell: It could be for 89 days if the park operators and tenants agreed for it to be an 89-day lease. They could continue those arrangements, but it would squarely fall within the application of the act. So there is flexibility.

The CHAIR: In what terms is the loophole being closed? I am sorry, it might just be me, but you lost me.

Ms Blackwell: There is a loophole that we were concerned about that people were trying to get out of the application of the act by providing a fixed-term agreement —

The CHAIR: Which did not count as a long stay.

Ms Blackwell: — which did not count as a long-stay agreement under the act. It is currently drafted so that we have removed that reference to three months so that you cannot have a fixed-term agreement for 89 days followed by another one and another one and another one, and the person has lived there for five years and they are not protected by the act.

The CHAIR: So they will be protected by the act. They could still have that agreement, but they will now be protected by the act.

Ms Blackwell: They will be protected by the act. They will fall within the scope of the act so the goal is to ensure that everybody who has this sort of arrangement is protected.

Hon COLIN de GRUSSA: Just a point of clarification on that 89-day agreement. Under the new act, if those agreements are automatically renewing, will that still occur or will they have to be terminated and renewed? Or how do you envisage that changing?

Ms Blackwell: We may have to work through some of those issues in the transitional regulations and working with industry to determine exactly how many parks operate in that way and how we can make sure that they fall under the scope of the act.

Hon COLIN de GRUSSA: Yes, okay.

The CHAIR: If the answer to the question, “Is this your principal place of residence?” was, “Yes”, would that person still be able to have an 89-day lease?

Ms Blackwell: Yes. The amendments are not intended to reduce the flexibility in the industry to offer the types of arrangements they offer. There are some parks that only offer periodic agreements, some parks offer 60-year leases, and there are fixed-term agreements that vary from three months to 12 months in a lot of mixed-use parks. So, there will still be the flexibility for the parties to agree to whatever suits their circumstances, or perhaps whatever the park operator is

willing to offer, but if a tenancy arrangement falls within the scope of what should be covered by the act—which are these groups of people who are living in parks as their homes who are vulnerable because they have a home that they may need to move—we certainly want the protections of the act to apply.

The CHAIR: Then they will be covered by the provisions of the act?

Ms Blackwell: They will be covered, yes.

The CHAIR: Okay. I think that is much clearer than it has been for most of the day.

Hon NICK GOIRAN: Now, I have not had an opportunity to read at length your answers to the questions that were provided prior to today's hearing but certainly, just quickly perusing it, I think the answer to the Henry VIII clauses from the department is basically, "Look, this is the break glass in case of emergency option"—my language, not yours—by saying, "Look, in case there is anything that might happen that is unforeseen and unintended"? The consultation process in this has been quite a number of years. After all that has been done, I am finding that I am going to need some persuading —

Ms Blackwell: Okay.

Hon NICK GOIRAN: — to be told, "Look, after everything that we have done and volumes of material, just in case there is something that we have forgotten we would like the Legislative Council to do what they rarely do and approve a Henry VIII clause".

Ms Blackwell: The intention of that provision to allow for modification or exemption from of 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. Also, as I am sure you probably —

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

[2.00 pm]

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 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. I guess more relevantly, because there are a broad number of types of parks—as I think I have just explained there is such a variety of tenancy arrangements and parks—the provisions that are included in the act that cover a large variety of matters may not necessarily fit appropriately or require modification in relation to a particular type of agreement. So, the intention of that provision is to allow for those modifications to be made that may be of a slightly technical nature.

If I can give you an example perhaps? There is a provision of that nature in the residential tenancies legislation that allows for exemptions or modifications to be made. When a tenant leaves the premises the landlord is meant to undertake an inspection and provide a report within a certain time frame. Now, the application of that provision has been modified in relation to housing association properties that are remotely located in order to allow for that provision to apply but in a modified way to suit the circumstances. There are also modifications made perhaps in relation to things like heritage places so that specific requirements about locks and security screens do not apply.

Hon NICK GOIRAN: Are we sure about that?

Ms Blackwell: About the residential tenancies amendments?

Hon NICK GOIRAN: Yes.

Ms Blackwell: Yes. I can —

Hon NICK GOIRAN: Okay, because it is sounding awfully familiar with the bill that was just dealt with by the Council and we knocked back those provisions, but that was in respect to family and domestic violence.

Ms Blackwell: So, the Residential Tenancies Regulations has a number of these small modifications to the act, because it is also a broad-ranging act as well. 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.

Hon NICK GOIRAN: I am not enthusiastic, but nevertheless that is a response.

The CHAIR: I could tell it was your "not enthusiastic" face. Just one final question. Will the fact that a mortgagee becoming entitled to possession no longer ending a long-stay agreement have any impact on the preparedness of mortgagers to grant loans to park operators?

Ms Blackwell: We did try to seek comment in the review process from the financial market. Nothing was provided, no concrete evidence, from the Caravan Industry Association. I can find out whether similar provisions have had any impact in other jurisdictions and respond to that one on notice, if that is of assistance.

The CHAIR: Would you like to take that on notice?

Ms Blackwell: Yes.

The CHAIR: Yes, okay, so that is a further question on notice. I have just one final question. In a retirement village, who sells the units?

Ms Lipscombe: That can vary. Sometimes it is the resident, but more often it is the operator of the village either directly or through an agent.

The CHAIR: How does that compare to a caravan park?

Ms Lipscombe: It is similar, though I think with the residential parks it is more often the owner because they actually own the building. If they are selling the residence, they tend to do it, though there have been some contracts that require that the operator do that.

The CHAIR: Okay, thank you.

Hon NICK GOIRAN: One last question?

The CHAIR: One final question.

Hon NICK GOIRAN: One final, final question. The statutory review, my quick count of it is that there are 48 recommendations that have arisen out of it. As an attachment to your submission you provided the decision regulatory impact statement of March 2017 and there at page 9 you say that, "The recommendations detailed in this paper represent the department's final recommendations to government arising from the statutory review process" and quickly counting those recommendations, there seems to me to be 48. Can you take this on notice and advise the committee which recommendations are being implemented by this bill? Of those not being implemented, how are they being addressed? And lastly, which recommendations have been abandoned, and why?

Ms Blackwell: Okay.

The CHAIR: Okay. That is the last question on notice, I think, and that concludes our hearing. Now, I do want to particularly thank you, Ms Blackwell. That was a tour de force.

Ms Blackwell: Thank you.

The CHAIR: Thanks to all of you. I have a closing statement here. Thank you all for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript. The committee requests that you provide your answers to questions taken on notice when you return your corrected transcript of evidence—as we are on a tight time frame we are asking for answers to questions on notice to be given by 4 pm on Tuesday, 5 March 2019. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Thank you very much, all of you, for coming in.

The WITNESSES: Thank you.

Hon NICK GOIRAN: Thank you.

The CHAIR: I was going to say I think you should take Monday off, but I think we might have just wrecked that for you.

Mr Smith: I have already given her Monday off.

The CHAIR: Thank you.

Hearing concluded at 2.06 pm

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