

**DEPARTMENT OF MINES, INDUSTRY REGULATION AND SAFETY**  
**RESPONSE TO PARK HOME OWNERS ASSOCIATION (PHOA) SUBMISSION**  
**Legislation Committee Inquiry – Residential Parks (Long-stay Tenants) Amendment Bill 2018**

**1 - Retrospectivity**

PHOA comment:

We hoped Clauses would be retrospective where possible.

We have now been told that due to the complexities of Contract Law, this could not be done. We accept this at present. But we still believe that there is no good reason why periodic leases and other short term leases should not conform to all the proposed new provisions in the Act.

Department response:

The majority of proposed amendments in the Bill apply to both existing and new agreements. However, any new provision that would have the effect of altering the contractual rights and obligations of the parties under their existing long-stay agreement will only apply to new agreements entered into after the amendments commence. The rationale for this approach is based on the rule of law that no one should be adversely subject to a retrospective change of the law

There is a risk that if park operators are compelled to alter the terms of existing agreements in response to a change in the legislation, this may undermine the commercial basis upon which those agreements were entered into and make the agreements unviable for some park operators. This could lead to park operators offering shorter term agreements with less secure tenure (e.g. periodic leases) or some park operators may choose to withdraw from the market and close their residential park. It should be noted that some park operators, particularly those with mixed-use parks are themselves small, family run businesses.

The majority of amendments also apply to both fixed-term and periodic long-stay agreements. However, in some limited instances, the proposed reform does not apply to periodic agreements. For example, the Bill amends the current Act to provide that fixed term agreements entered into after the amendments commence will not be able to be terminated on the sale of the park with vacant possession.

This protection will not apply to periodic tenancies. This policy decision is reflective of the more flexible nature of periodic agreements (for both the park operator and tenants). As indicated in the Decision Regulatory Impact Statement, periodic tenants often pay less for their home and can pay lower rents in recognition of the less secure nature of this tenancy arrangement<sup>1</sup>.

The Bill does amend the act to remove the park operator's ability to terminate a periodic, site-only agreement "without grounds". This will provide the most vulnerable periodic tenants (i.e. those who own their own home) with greater certainty of contract.

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<sup>1</sup> Decision Regulatory Impact Statement – December 2017 pg.16

## **2 - Sale of homes**

### PHOA comment:

We had hoped legislation would secure every homeowner's ability to sell his/her own home.

A detailed scrutiny of the Amendment Bill shows us that this will still not happen for many current leaseholders.

### Department response:

Under the current Act, a tenant is entitled to sell a home owned by the tenant while it is in place on the residential park site, unless the agreement expressly provides that on-site sales are prohibited. The Bill amends the current Act to remove the ability for long-stay agreements to prohibit tenants from selling their home on site (amended section 55). This amendment will not apply to existing long-stay agreements as this would have the effect of altering a term of an existing commercial agreement. However, it is always open to a tenant to re-negotiate with the park operator, this term of their agreement (if possible).

The Bill also amends the Act to include a specific provision to prohibit a park operator from interfering with, hindering or obstructing the sale of a relocatable home by a tenant (proposed section 56). This would include the park operator unreasonably restricting access to the park for sales agents and potential buyers, making false or misleading statements about the sale and unreasonably removing a for sale sign.

The Bill also clarifies that a park operator cannot require a tenant to appoint a particular person as selling agent (proposed section 57)

## **3 - Relief from unfair rent provisions.**

### PHOA comment:

The Amended Act seems open to interpretation in this. And the onus is still on the often vulnerable and ill-equipped homeowners to dispute harsh policies through SAT. We have heard that there will be "greater powers given to SAT" but we are yet to see what these are, and how much they will help park homeowners.

### Department response:

The current RPLT Act already includes a number of protections in relation to rent and rent reviews.

The rent must be disclosed to a person prior to entering into an agreement. For on-site home agreements the long-stay tenant must be given at least 60 days' notice of any rent increase. If the on-site home agreement is for a fixed term, the rent may only be increased during the term if the agreement provides for such an increase. The minimum interval between rent increases is six months. For site-only agreements, rent can only be reviewed in accordance with the tenancy agreement. The rent can be increased at intervals of 12 months. For each review date the agreement must set out a single basis for rent review).

The Bill includes a number of reforms in relation to rent. The focus of these reforms is on better disclosure regarding rent and other costs before a person enters into a long-stay agreement. This disclosure requirement will include worked examples of predicted future rent. This way a person can make a more fully informed decision regarding the affordability of their tenancy arrangement.

The Bill also amends the Act to prohibit long-stay agreements from including a provision for variation of rent based on 'market review'. The review of the RPLT Act highlighted the difficulties and uncertainty in undertaking proper market review of rent in the residential parks context. Given the importance for long-stay

tenants, many of whom are on fixed incomes to know what their future rent will be market rent reviews are considered inappropriate for this sector.

The prohibition on market rent will not apply to existing long-stay agreements - so that if a current long-stay agreement provides for market rent reviews on the basis of market rent – this provision will continue to apply (s.106(2)). To automatically change current agreements by statute to remove market rent reviews would undermine the commercial basis upon which those agreements were entered into without providing an alternate provision for rent review.

However, the Act currently provides that if rent is to be calculated on the basis of market rent, the park operator must have regard to a report obtained by a licensed valuer – a penalty of \$5,000 applies (see current s.31). The SAT has also held that it has the power to determine a dispute about rent payable following a market review and make an order to determine the amount of rent payable<sup>2</sup>

New section 62A(2)(b) will also allow a tenant to apply to the SAT for relief if a term of a long-stay agreement is harsh or unreasonable or inconsistent with the Act. Prior to bringing a matter before the SAT, a tenant may seek to renegotiate with their park operator and may seek the assistance of tenant advisory bodies.

#### **4 - A mechanism to provide a level of compensation for every homeowner who is forced to relocate house, regardless of tenancy type or length.**

##### PHOA comment:

This is not addressed in the Amendment Bill.

The compensation provisions of the RPLT Act do not apply to tenants with periodic long-stay agreements. Tenants on periodic leases have the flexibility to terminate the lease themselves on short notice. The Decision Regulatory Impact Statement, notes that periodic tenants often pay less for their home and can pay lower rents in recognition of the less secure nature of this tenancy arrangement<sup>3</sup>.

The review of the Act considered whether periodic tenants should also be paid compensation. However after an analysis of the costs and benefits it was determined that to provide compensation would impose a significant cost burden on park operators and would not recognise the nature of periodic agreements. It would also likely result in increased costs to tenants and a decrease in the number of long-stay tenancies available.

The Bill amends the Act to remove the park operator's ability to terminate a periodic, site-only agreement "without grounds". This will provide the most vulnerable periodic tenants (ie. those who own their own home) with greater certainty of contract.

PHOA's submission states that the Bill is doing away with the term "periodic" . However, this is not the case and appears to be a misinterpretation of the Bill.

#### **5- Standard terms to apply to all agreements**

##### PHOA comment:

Our scrutiny of the Amendment Bill shows that there are a number of ways in which the aim of this clause can be easily negated by operators.

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<sup>2</sup> BALL AND OTHERS as per Annexure A and ASPEN TOURIST PARKS PTY LTD [2010] WASAT 44

<sup>3</sup> Decision Regulatory Impact Statement – December 2017 pg.16

Department response:

It is unclear from PHOA's comments how the aim of this amendment can be negated by operators.

The Bill amends the RPLT Act to provide that all the standard contract terms (now contained in Part 2 Division 5 of the Bill) will be deemed to apply to all long-stay agreements including existing agreements. Any term included in an existing agreement that is inconsistent with a standard term will be deemed void. The RPLT Act has also been amended to prohibit any form of contracting out of the Act (including the standard terms).