DEPARTMENT OF MINES, INDUSTRY REGULATION AND SAFETY
RESPONSE TO CARAVAN INDUSTRY ASSOCIATION WESTERN AUSTRALIA (CIAWA) SUBMISSION
Legislation Committee Inquiry – Residential Parks (Long-stay Tenants) Amendment Bill 2018

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

Department response:

The CIAWA amendment is not supported.

Section 71 of the RPLT Act currently provides that a park operator may apply to the SAT for an order terminating a long-stay agreement on the grounds that the tenant has intentionally or recklessly cause or permitted or is likely to cause or permit:

- serious damage to park premises; or
- injury to the park operator or to an agent of the park operator or to any other person lawfully on park premises.

Section 71 will not be amended by the Bill.

It is considered that section 71 adequately covers circumstances where a tenant behaves in a threatening manner towards park operators and their staff. Accordingly, the Department is of the view that amendment in the manner suggested by CIAWA is not required.

Section 10C – Long-stay agreement binds park operator's successors in title

Department response:

The CIAWA amendment is not supported.

Proposed section 10C as currently drafted in the Bill means that tenants would continue to be bound under the terms of the original agreement in line with general contractual principles.

The proposed CIAWA wording amendments would preclude verbal agreements and terms under subclause (1) from being pursued. While it may preferable that all the terms of an agreement be in writing, this is not always the case, and verbal agreements, where appropriate, should be able to be relied upon notwithstanding the terms and conditions of any verbal agreement may be more difficult to prove.

Section 12(1) – Restrictions on amounts park operators may charge

Department response:

The CIAWA 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 RPLT Act and Regulations1 permit an operator to charge fees for additional services or facilities such as: visitors fees; consumption of utilities (if separately metered); gardening services; storage services; additional

[1] RPLT Act section 12 and RPLT Regulations regulation 10 and schedule 8

parking spaces; servicing of air-conditioning; cleaning of gutters; and screening of prospective tenants.

The statutory review recommended that a cost recovery principle be applied in relation to these permitted additional fees. The cost recovery principle is aimed at those costs that are separately passed onto tenants where little, if any, value is added by the operator.

Proposed section 12 implements this cost recovery principle.

The amendments proposed by CIAWA are contrary to the review recommendation and would likely create uncertainty, and could potentially result in tenants paying increased costs (e.g. "reasonable profit component") in relation to their long-stay agreements.

It should also be noted that proposed section 31 makes provision for increases in rent due to unforeseen cost increases in running a park. The objective of this amendment is to ensure the ongoing viability of parks.

Section 20A – Park operator's continuing disclosure obligations about material changes

Department response:

The CIAWA amendment is not supported.

Section 20A creates a continuing obligation on park operators during the life of the tenancy agreement to disclose a material change which may affect the tenant's use or enjoyment in relation to the park will be affected.

As currently drafted, section 20A applies only to arrangements or restrictions that are likely to occur.

The additional wording suggested by CIAWA does not further clarify this requirement.

Section 21 – Security bonds

Department response:

The CIAWA amendment is not supported.

Section 21 has been amended to remove key bonds for consistency with the *Residential Tenancies Act 1987*.

These costs may be included as prescribed fees permitted under section 12. This matter will be dealt with as part of the consultation on the Regulations.

Section 32H(4) – Locks and security

Department response:

The CIAWA amendment is not supported.

Section 32H replicates the term currently provided for in Schedule 1 Clause 12 and does not introduce new requirements.

Proposed subsection 32H(6) provides that a park operator must not breach the term referred to in subsection (4) without reasonable excuse.

Reasons such as health and safety or an emergency would fall within the scope of 'reasonable excuse' and would not prevent a park operator from taking action to 'make safe' premises without first having obtained the consent of the tenant.

Section 63C – Recognising persons as long-stay tenants

Department response:

The CIAWA amendments are not supported.

Proposed amendment to subsection (1) - The SAT will be required to take all relevant factors into account in making a determination under this section, including whether the park operator has granted permission for a person to reside in the premises. However, the application of this clause may be unnecessarily restricted if it is limited to only those persons who have been granted permission to reside at the premises.

Proposed amendment to subsection (4) – The SAT is given the discretion to order that the agreement continue on appropriate terms and conditions. This gives both operators and tenants to opportunity to seek and variations necessary to accommodate a change in tenant.

Proposed amendment to subsection (5) – This amendment is not required. Before making an order under subsection (4) the SAT must consider whether the person (resident) is suitable to be recognised as a tenant. This would include whether the person meets the park's usual criteria for tenancy.

Section 10B(4) – Particular terms in long-stay agreements

Department response:

The CIAWA amendment is not supported.

Proposed section 10B(4) reflects the position currently provided for in section 10(b) of the RPLT Act which provides:

> *A long stay agreement must … (b) include such clause, if any, as are prescribed;*

Any regulations made pursuant to this or any other provision are made in consultation with industry, are subject to and regulatory impact assessment processes and are subject to disallowance by the Parliament.

The proposed amendment suggested by CIAWA is covered in proposed section 10B(2)(b).

Section 20 – Age restricted residential parks

Department response:

The CIAWA amendment is not supported.

The proposed section restates current Schedule 1 Clause 9.

The section permits an operator to include a clause in an agreement restricting the ability of children to reside at a park.

A long-stay agreement may include the words 'ordinarily' – however this wording is not necessary in the Bill and, if included, might have the unintended consequence of restricting the type of clauses a park operator may include in a long-stay agreement.

Section 8(2) – section providing that the Retirement Villages Act 1992 does not apply to a lifestyle village for retired persons

Department response:

The CIAWA amendment is not supported.

The purpose of this amendment is to provide clarity as to which Act should apply to a particular facility.

If a facility falls within the definition of a retirement village under the Retirement Villages Act, then that Act, with greater regulatory oversight, should apply.

The amendment to the RLPT Act clarifies that if a facility is regulated by the Retirement Villages Act, then the RPLT Act is not to apply.

It is highly unlikely that there will be overlap between facilities – the definition of a retirement village scheme requires payment of a premium by the resident for admission to the scheme. This type of fee is not permitted under the RPLT Act.

In addition, the definition of 'lifestyle village' has been deleted by the Bill.

Section 10A – Prescribed standard-form agreement

Department response:

The CIAWA amendment is not supported.

Park operators will not be prevented from using their own agreement and will continue to have the flexibility to include their own special conditions in standard-form agreements – these will need to be specifically identified and cannot be inconsistent with the terms of standard-form agreements or with the Act.

The standard-form agreements will be developed in consultation with park operators and long-stay tenants.

Section 32N – Levies, rates, taxes and charges to be paid by park operator

Department response:

The proposed changes are consistent with the Residential Tenancies Act.

Further information has been requested from CIAWA and the Office of State Revenue to determine whether the proposed amendments are appropriate.

Section 57B – Park operator not required to be licensed to act as selling agent

Department response:

The CIAWA amendment is not supported.

Proposed section 57B replicates current section 58(1).

The purpose of the exclusion from licensing is to allow a park operator who acts as selling agent (as a small component of their overall business) to do so without a licence.

However, if a separate entity operates as a selling agent, it is not appropriate for the exclusion to apply.

It is not necessary to specifically refer to employees as they are covered by this exclusion by virtue of the nature of their employment.

Section 62D – Orders in relation to park operator's representations

Department response:

The CIAWA amendment is not supported.

Proposed section 62D is intended to give the SAT broad powers to make the orders considered appropriate in the circumstances of the case. The proposed amendment would fetter the SAT's discretion.

Furthermore, the SAT currently has a broad power under the Act to order specific performance under section 62(4)(b).

Section 42 – Termination by park operator without grounds

Department response:

The CIAWA amendment is not supported.

The current ability to terminate 'without grounds' is restricted by section 68(4) which provides that in determining an application for vacant possession the SAT must be 'satisfied that terminating the agreement is justified in all the circumstances'.

The proposed amendments will provide clarity by outlining those circumstances in which termination is justified and setting clear processes (including requirements for provision of evidence).

This is a key amendment proposed by the Bill and provides greater certainty and fairness to tenants.

Proposed new sections will provide adequate grounds for termination for park operators, including:

- the park is to be closed or redeveloped (s.41A);
- the site is required to undertake works (s.41B)
- the long-stay site is to be used for a different purpose (s.41C);
- the tenant has repeatedly interfered with the quiet enjoyment of the park by other tenants (s.71A).

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.