

**LEGISLATION COMMITTEE - QUESTIONS ON NOTICE**  
**Residential Parks (Long-stay Tenants) Amendment Bill 2018**

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**Question 1:**

Details of consultation workshops on the drafting of the Bill.

**Response:**

CIAWA and individual park operators

A workshop was held with park operators and their representatives on 10 May 2018. The following representatives of CIAWA and individual residential parks attended the meeting:

- Craig Kenyon - CEO CIAWA
- Greg Mohen - Partner-Kott Gunning
- Jacob Chacko - Acclaim Tourist Parks and President of CIAWA
- Dani Layman - Summerstar Parks
- Donna and Laura Cocking - Mandurah Caravan and Tourist Park
- John Wood - National Lifestyle Villages (NLV) and CIAWA Board Member
- Marisa Arena - Banksia Tourist Park

A copy of the discussion points circulated to attendees and discussed at the workshop is at **Attachment 1**.

PHOA and individual tenants

A workshop was held with tenants and their representatives on 23 May 2018. The following representatives of PHOA and individual residential parks attended the meeting:

- Ken Mann – PHOA President and tenant at Woodman Point
- Simon Watt – Vice President and tenant at Woodman Point
- John Flegeltaub – tenant at Serpentine Falls Park Home and Tourist Village
- Terry Izzard – tenant at Hillview Village (NLV)
- Noel Hunt - tenant at Hillview Village (NLV)
- Richard Cleveland – tenant at Tuart Lakes (NLV)
- John and Maxine Russell – tenants at tenant at Tuart Lakes (NLV)
- John Ransom – tenant at Banksia Village
- Jim Cusack – tenant at Koombana Bay

A copy of the discussion points circulated to attendees and discussed at the workshop is at **Attachment 2**.

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**Question 2:**

Proposed amendment to section 71A to include circumstances where a tenant “repeatedly threatens or abuses a park operator”. What would be the concern in extending this provision?

**Response:**

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

If the ability to terminate on the ground that a tenant has threatened or abused a park operator or staff is to be included in the Bill, a set of safeguards will be required in order to ensure that the provision is not used capriciously by operators. For example:

- the provision should refer to serious or persistent threats or abuse, so that minor incidents do not justify termination;
- termination should only be permitted if notice is given to the tenant to cease the behaviour and the behaviour continues;
- an application to the SAT would be required;
- SAT would need to be satisfied that termination is justified in all the circumstances; and
- SAT should be required to consider whether the termination is motivated by the fact that a long-stay tenant has complained to a public authority or attempted to enforce their rights under the agreement.

Section 71A includes these types of safeguards in relation to termination on the grounds of interference with quiet enjoyment.

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**Question 3:**

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?

**Response:**

Currently, section 12 of the Act provides that “a park operator must not require or receive from a long-stay tenant, or prospective long-stay tenant, any payment of money for or in relation to entering into, renewing, extending or continuing the long-stay agreement except money for rent and a security bond.”

The words “for or in relation to entering into, renewing, extending or continuing” have been removed by the Bill. The reason for this is that legal advice received in relation to the same provision in the *Residential Tenancies Act 1987* prior to 2013 was that these words limited this provision only to actions relation to the drafting, negotiating or extending of a lease agreement. It would not extend to prohibiting conduct such as the charging of meter reading fees, postage and photocopying fees for supplying a copy of a utilities account to a tenant and so forth. The same limitation currently applies in the *Residential Parks (Long-stay Tenants) Act 2006*.

As noted in the evidence, the mischief that this proposed amendment aims to address is the conduct of some park operators to charge ad hoc fees to residents who have little choice but to pay these fees, even though such fees place a substantial strain on their already limited incomes. One of the more common fees complained of is the charge by park operators for reading the tenant's sub meter; that is, the park operator moves about the park checking each of the resident's sub-meters and charges each of the residents a fee on top of their utility consumption charges for doing this.

The important aspect of the proposed amendment is that it restricts payments "in relation to the long-stay agreement". This curtails this provision to those fees and charges that form part of the long-stay agreement and are a mandatory aspect of living in the residential park. Such fees and charges include rent, security bond, utility consumption charges and option fees.

If, for example, a park operator chose to operate a convenience store on site, as many do. Under this provision, the park operator would not be prohibited from charging an amount to the resident for the purchase of milk and bread, because this is not a charge in relation to the long-stay agreement. It is an entirely separate contractual arrangement entered into by the resident and the park operator. Likewise if the park operator chose to operate a side business of pressure cleaning for caravans. Provided the resident has a choice whether or not to purchase the service, and assuming they are free to engage the services of a competitor if they so choose, then payment for this service by the resident would not be prohibited by the proposed amendment because it too is not a payment in relation to the long-stay agreement. It is also an entirely separate contract between the resident and the park operator.

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**Question 4:**

*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.*

**Response:**

Current section 12 already provides that a park operator must not require or receive a payment, so this is not a new concept.

The problem with removing the words "or receive" is that it opens the door for practices like rent bidding, where landlords, or park operators, can "encourage" tenants to offer incentive payments for their application to be given more favourable treatment. This has been an issue in residential tenancies for some time and it is not inconceivable that it could occur in a residential park setting.

Hypothetically, how it could occur in a residential park is where a current resident is endeavouring to sell their park home, has a prospective buyer, but that buyer must then rely on the park operator entering into a long-stay agreement with them. There may be a perceived pressure on either the current tenant who wants the sale to proceed or the prospective purchaser who wants to enter into the lease to offer the park operator an incentive payment for the lease application to be considered favourably. That pressure could be felt whether or not the operator is asking for a payment.

It is important to prevent this type of conduct by including a prohibition on receiving payments as well as requiring them.

Given that, in relation to the answer above, ad-hoc services offered by the park operator would not be captured by proposed new section 12, and given the potential for harm if incentive payments and similar conduct would cause if it became entrenched, the cost/benefit analysis favours leaving the words “or receive” in the proposed amendment.

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**Question 5:**

Proposed CIAWA amendment 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?... Would it create some unintended consequence that we should be mindful of?*

**Response:**

Parliamentary Counsel’s Office has advised that the phrase “and which is materially likely to occur” may create some uncertainty or unintentionally broaden the application of the provision.

If an amendment to section 20A is required, Parliamentary Counsel’s Office has suggested an amendment as follows:

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

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**Question 6:**

Removal of ability to charge a key bond under section 21. Could a specific reference to a charge for a replacement key be included in the Act?

**Response:**

It is intended that a reference to the cost of replacement keys or security devices will be included in the Regulations as a fee prescribed under section 12(e). These potential costs would therefore be treated in the same manner as other costs under long-stay agreements.

If the Committee is of the view that a specific reference to a replacement key charge should be included in the Act. It is the Department’s view that this should be included as a separate provision, rather than as part of section 21 which relates to security bond payments.

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**Question 7:**

Has the Department obtained advice to satisfy itself that health and safety would be interpreted under “reasonable excuse”?

**Response:**

Proposed new section 32H is consistent with existing clause 12 of Schedule 1 of the Act. It is also consistent with residential tenancies legislation in all states and territories.

A search of the State Administrative Tribunal does not uncover any decisions in relation to a reasonable excuse for changing the locks. South Australia’s *Residential Parks Act 2007* has a similar provision to Western Australia’s current laws. A search of case law on that provision likewise did not turn up any results.

If locks were to be changed by a park operator for health and safety reasons, it would be the responsibility of the Department to take prosecution action. The Department would not prosecute a park operator if the locks to common areas were changed for health and safety reasons.

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**Question 8:**

In relation to proposed section 63C, 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?

**Response:**

Proposed section 63C will apply to all long-stay agreements.

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**Question 9:**

CIAWA proposed amendments to section 32N. Park operator to bear the cost of rates and taxes.

Is there scope to include the following amendment:

*provided that the long-stay tenant will still be indirectly responsible for these costs where they make up a component of the rent.*

**Response:**

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

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

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

The Department is of the view that this may be an example of a circumstance in which the proposed regulation making power in section 9A could be used to modify the application of the Act in very narrow circumstances and with appropriate conditions attached.

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**Question 10:**

Do tenants on periodic agreements have the capacity to seek an order from the SAT in relation to a rent increase?

**Response:**

Current section 62(2)(b) of the Act provides that a party to a long-stay agreement may apply to the SAT for relief if any dispute has arisen under or in connection with the agreement or in connection with any payment to be made under the agreement.

On hearing an application under subsection 62(2) the SAT may give such directions and make such orders as it consider appropriate - subsection 62(3).

Subsection 62(4) sets out a list of specific things the SAT may do, including ‘determine the amount of rent payable under the agreement, having regard to the terms of the agreement’.

In BALL AND OTHERS as per Annexure A and ASPEN TOURIST PARKS PTY LTD [2010] WASAT 44, the SAT held that it had the jurisdiction and power under section 62(2) to determine a dispute concerning the amount of rent payable and to make an order to determine the rent payable under the respective long-stay agreements, having regard to the terms thereof.

Section 62 is replicated in the Bill in proposed sections 62A and 62C.

Tenants on periodic agreements will therefore have capacity to seek an order from the SAT about the amount of rent payable under an agreement.

In addition, current proposed section 63 (which is similar in terms to current section 63) provides that a tenant may seek an order for the reduction of rent on the grounds that there has been a significant reduction in the size or quality of the agreed premises, the number or quality of chattels provided or the extent or quality of facilities or services provided.

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**Question 11:**

Will the fact that a mortgagee becoming entitled to possession no longer ending a long-stay agreement have any impact on the preparedness of mortgagees to grant loans to park operators?

**Response:**

This issue was considered as part of the statutory review – see Part 10.4 of the Decision Regulatory Impact Statement for further detail and analysis.

It will always be difficult to determine whether regulatory requirements have an impact on the ability of an operator to obtain finance, given the number of factors a financier will take into

account. It is more likely that the marketplace conditions of the day would have a greater bearing on lenders and influence their decisions about granting loans. For example, the current real estate market has been impacted by a slow-down in the economy. Other factors such as the recent Royal Commission into financial institutions could also have an impact on lending practices.

The Department was not provided with any evidence as part of the review process that similar provisions in other jurisdictions have resulted in a reluctance on the part of financiers to lend to park operators.

A provision of a similar nature is included in the *Retirement Villages Act 1992* (see section 17). The Department is not aware of any adverse impact on the ability of operators to obtain finance in that sector as a result of that provision.

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**Question 12:**

The statutory review made 48 recommendations:

- Which recommendations are being implemented by the Bill?
- Of those not being implemented, how are they being addressed?
- Which recommendations have been abandoned and why?

**Response:**

All of the recommendations of the statutory review will be implemented. The majority of changes will be made by the Bill, however some recommendations will be implemented by amendments to the regulations or via community education.

**Attachment 3** outlines the recommendations, identifies the implementation mechanism and notes minor changes made during the drafting process.

## RESIDENTIAL PARKS (LONG-STAY TENANTS) AMENDMENT BILL 2018

### Issues for consultation Park operator meeting

#### Content and form of long-stay agreements

The *Residential Parks (Long-stay Tenants) Act 2006* (the Act) currently permits parties to a long-stay agreement to contract out of specific rights and obligations set out in the legislation.

In addition, while a long-stay agreement must currently be in writing and contain all the information and clauses outlined in the standard form agreements contained in the legislation, the agreement is not required to be in a standard form and can include additional terms.

#### **Proposed amendments:**

- Any form of contracting out of the standard rights and obligations will be prohibited.
- All of the standard terms for long-stay agreements, currently contained in Schedule 1 of the Act, will be moved into the body of the legislation and amended to provide clarity (if necessary).
- The regulations will include standard form long-stay agreements that all parties must use. Parties will still be able to include additional clauses but these must be clearly set out and labelled in a separate part of the agreement and must not be inconsistent with the Act.
- The State Administrative Tribunal (the Tribunal) will be given the power to order a park operator to prepare a long-stay agreement in the form of a prescribed standard form long-stay agreement if the prescribed agreement has not been used.

These amendments ensure the fundamental rights of tenants and the responsibilities of park operators as contained in the standard clauses are preserved. This amendment is also consistent with the residential tenancies legislation.

#### **Issues for discussion**

To what extent are your long-stay agreements currently in a form that is different to the prescribed form?

What types of matters do the variations or special conditions generally relate to?

Do mixed use parks generally use the prescribed form of agreement?

#### Children living on agreed premises

The Act currently provides that a person must not refuse to make a long-stay agreement with an individual on the grounds that it is intended that a child will live on the agreed premises unless the residential park is a lifestyle village (or where the licence under the *Caravan parks and Camping Grounds Act 1995* permits the park operator to include such a term).

#### **Proposed amendments in Bill**

The concept of lifestyle village is being removed from the Act and the Bill provides that a long-stay agreement may include a term prohibiting children only if the site is within an age-restricted park. An 'age-restricted park' is defined to mean a park which is occupied by persons of a particular age.

#### **Issues for discussion**

How are age restrictions currently included in the long-stay agreements at the moment? How strictly are these restrictions enforced – for example, do all tenants need to be over a certain age?



## Exit fees or voluntary sharing arrangements

While the Act prohibits the charging of entry fees, it does not prohibit the charging of fees when a tenant leaves a residential park.

It is understood that long-stay agreements sometimes provide for the payment of exit fees or other types of voluntary sharing arrangement in exchange for lower site fees or some other benefit. Exit fees and sharing agreements (sometimes referred to as shared equity or capital gain sharing arrangements) are not currently regulated by the Act.

### ***Proposed new provisions:***

The Bill amends the Act to regulate, rather than prohibit, shared equity agreements and the use of exit fees. In particular, the Bill requires greater transparency and disclosure in relation to these fees and provides for the following new requirements:

- The amount of the exit fee is to be as agreed between the individual parties at the time of entry into the agreement and cannot be varied during the term of the agreement without the consent of both parties to the agreement.
- No other fee, charge or premium will be recoverable from an outgoing long-stay tenant in addition to the exit fee at the end of the tenancy – for example, where a park operator charges an exit fee they will be prohibited from also charging a sales commission
- The disclosure document to be provided to all long-stay tenants prior to entering into their agreement, must include details of how the sharing arrangement/exit fee will be calculated and provide worked examples so the tenant understands how it works in practice.

### ***Issue for discussion:***

#### *What types of voluntary sharing arrangements are offered in the market?*

The Bill will include a definition of 'voluntary sharing arrangement', which will include agreements to:

- pay rent on a deferred basis
- pay the operator one of the following when the home is sold:
  - a share of the 'capital gain' (the difference between the price the home was purchased for and the price it was sold for)
  - a share of the total sale price
- pay a sum specified in the agreement if the home is sold or removed from the site.

Query – Are any other types of sharing arrangements offered in the market? What is the benefit tenants received for agreeing to a sharing arrangement – for example is lower site rent payable?

#### *When can a voluntary sharing arrangement be offered?*

The legislation in New South Wales provides that where a long-stay agreement is to be entered into with an existing home owner or where the seller is not the park operator (i.e. the seller is the current home owner), the park operator is prohibited from only offering a sharing arrangement and must also offer a rent only agreement.

This provision prevents a park operator from forcing an existing home owner to enter into a shared equity arrangement or from making it more difficult for a home owner to sell their own home by only allowing them to offer a shared equity arrangement to a prospective buyer. In this instance, the rent to be charged under the 'rent only agreement' must not be greater than the higher of either the rent paid by the current tenant or the rent another tenant in the park is paying for a comparable site.

Query – Do parks currently offer tenants the option of a rent only agreement in all cases or do some parks include sharing arrangements in all of their long-stay agreements?

## Termination of long-stay agreements

Security of tenure is recognised as a key issue for park residents and is impacted by several factors, including the park operator's right to terminate a long-stay agreement. Some amendments will be made to the Act to clarify parties' rights and obligations in relation to termination. A summary of the existing and proposed changes to the termination provisions in the Act are attached to this document as **Attachment A**.

### ***Proposed amendments for termination:***

As outlined in Attachment A, the Bill incorporates the following key amendments relating to termination:

- Without grounds termination will no longer apply to site-only agreements and will only apply to on-site home agreements. For fixed term on-site agreements termination cannot occur before the end of the tenancy period, but periodic on-site agreements can be terminated prior to the end of the tenancy with 60 days notice.
- Without grounds termination for site-only agreements has been replaced with an expanded list of specific circumstances in which termination can occur. The following circumstances included in the Bill are generally those the Tribunal would have formerly determined to be justified or which are consistent with circumstances provided for in other jurisdictions:
  - The residential park is to be closed or used for a different purpose. If the different purpose requires development under the *Planning and Development Act 2005* then the park operator can only terminate if approval has been granted under that Act. The park operator is also required to notify the Commissioner for Consumer Protection 7 days before giving notice to tenants.
  - Vacant possession is required for works. Termination is conditional on the park operator giving the tenant evidence showing the basis upon which the works are to be carried out.
  - The long-stay site is to be used for a different purpose.
  - The tenant or the tenant's guest repeatedly interferes with the quiet enjoyment of the other tenants. A park operator can apply to the SAT for an order for termination if the park operator has given the tenant notice in the approved form asking the tenant or the tenant's guest to stop interfering with quiet enjoyment of the residential park; and despite the notice, the tenant or the tenant's guest has not stopped the interference.
- For mortgages entered into after the commencement of the changes to the Act, a long-stay agreement will not automatically terminate on mortgagee possession - mortgagees will be required to take on the obligations of the park owner in relation to park lease agreements.
- Any subsequent purchaser or successor in title of the residential park will be bound by those long-stay agreements entered into after the commencement of the changes to the Act.
- Long-stay tenants will be able to apply to the SAT for an order terminating their long-stay agreement on the grounds of undue hardship. The park operator already has this right
- The SAT can make an order terminating a site-only agreement upon the death of the tenant if the park operator is interfering with the process of the relocatable home being removed or sold.
- It is noted that a new provision will be included by a separate Bill allowing a tenant to terminate an on-site home agreement on the grounds of family violence. This amendment has also been made to the residential tenancy legislation and is considered to be in the public interest.

### ***Issues for discussion:***

Are the specific grounds for termination appropriate?

Are there any reasons an operator might seek to terminate a long-stay agreement that are not covered by these grounds?

## Park operator to provide notice prior to end of fixed term tenancy

### **Proposed new provision:**

The Bill requires a park operator to give notice of whether they intend to extend or renew a fixed term agreement with the tenant. At this stage it is proposed that 60 days notice be required, prior to the end of the fixed term. The Bill also requires the park operator to provide the tenant with the proposed terms and conditions of any new agreement.

If the park operator does not give this written notice, the State Administrative Tribunal will have the power to suspend the operation of the order for termination and vacant possession by up to 60 days. This will ensure a tenant gets adequate notice that the agreement is ending and provides greater certainty for both parties at the end of a fixed term.

### **Issues for discussion:**

What do park operators currently do regarding notice at the end of a fixed term?

The provision provides for 60 days notice – is this timeframe appropriate?

Do problems often arise at the end of a fixed term – for example, where tenants have not made arrangements to relocate a home?

## Park operator continuing disclosure obligations

### **Proposed new provisions:**

This new provision requires a park operator to notify a tenant as soon as practicable after becoming aware of a material change in relation to a residential park and to indicate how the tenant's use or enjoyment of the park will be affected.

- "Material change" is defined as: an arrangement or restriction that may materially affect the occupation or use of a site or other park premises in a park by the park operator or tenant.
- The Bill includes the following examples of material changes:
  - a proposed sale or redevelopment of the residential park;
  - a change in a requirement of a licence a park operator is required to hold under a written law that impacts on the tenant's use of the park; or
  - a change in the use of land for which an approval of development is required under the *Planning Development Act 2005*.

### **Issues for discussion:**

Is the definition of 'material change' sufficiently clear?

### Sale of park home – appointing a sales agent

**Proposed new provision:**

The Bill clarifies that the tenant may appoint a person other than the operator to act as the selling agent.

**Issues for discussion:**

*How are sales agents currently appointed? Do agreements apply for a specified period?*

*If sales agents (other than the operator) are appointed – what types of qualifications do they have? Are they licensed real estate agents?*

### Disclosure to be given to purchaser of home

**Proposed new provision:**

New provision requires that a tenant or their agent who is selling a home on-site must give a potential purchaser a disclosure form. It is contemplated that the form will be approved by the Commissioner for Consumer Protection and be available on the Department's website. It is anticipated that the form will be based on a similar form currently used in the United Kingdom and will highlight key information such as:

- the fact the sales agreement between the home owner and the purchaser for the sale of the park home is separate from the agreement between the park operator and the purchaser to acquire the right to occupy the site;
- the fact the purchaser will not acquire the land upon which the park home is situated;
- the fact the purchaser will have to separately negotiate an agreement with the park operator for the right to occupy the site;
- details of the park operator;
- key terms of the existing long-stay agreement.

It is further anticipated that if the disclosure form is not provided by the seller to purchaser, the purchaser will have the right to go to the Tribunal to seek an appropriate order (e.g. terminate the contract, seek compensation etc).

**Issues for discussion:**

What sort of issues have operators experienced when an incoming tenant was not aware of the nature of the long-stay tenancy?

### Sale of home conditional upon assignment/entry into long stay agreement

**Proposed new provision:**

The Bill provides that it is a condition of the contract for the sale of the relocatable home that the park operator must (within a reasonable time after the sale contract has been entered into) enter into a long –stay agreement with the buyer or assign the long-stay tenant's interest to the buyer.

**Issues for discussion:**

The provision currently provides that the park operator must enter into a new long-stay agreement or assign the existing tenant's interest 'within a reasonable time'. What would you consider to be a 'reasonable' timeframe? If appropriate, it may provide greater certainty to include an actual timeframe in the provision.

## Park rules

The Act does not currently include specific provisions about the application of park rules. There is no requirement to consult tenants in relation to amendments to park rules and any disputes are currently dealt with by the Tribunal under its broad jurisdiction to deal with disputes under the legislation.

### ***Proposed amendments:***

New provisions about park rules have been included to clarify obligations of parties and:

- require park rules be fair and reasonable and clearly expressed;
- require park operators apply the rules consistently, fairly and reasonably;
- require park operators to take reasonable steps to ensure tenants comply; and
- give tenants the specific right to apply to the Tribunal in relation to an unreasonable park rule.

It is proposed that the regulations will provide greater detail about the way the park operator can amend the park rules. Further consultation will be undertaken in relation to these matters when amendments to the regulations are drafted.

### ***Issues for discussion:***

The current definition of 'park rules' in the Act includes rules made by a park liaison committee – are rules often made by the park liaison committee?

## ATTACHMENT A – SUMMARY OF GROUNDS FOR TERMINATION BY PARK OPERATOR

Proposed new provisions are shown in shaded cells. Proposed amendments are shown in italics.

TERMINATION WHERE TENANT IS AT FAULT		
Non-payment of rent	Default notice and termination notice. Application to SAT for vacant possession if necessary.	Periodic and fixed term agreements
Breach of long-stay agreement <i>Obligations clarified in relation to maintenance and repair obligations</i>		
Tenant causing damage or injury	Application to SAT required.	
<i>Tenant repeatedly interferes with quiet enjoyment of park by other tenants</i>	Notice to cease and application to SAT.	
Tenant abandons premises	Application to SAT required.	

TERMINATION RELATED TO USE OF PARK		
Sale of park with vacant possession <sup>1</sup>	Notice required – 180 days for site-only and 60 days for on-site.  Application to SAT for vacant possession if necessary.	Periodic agreements.  No termination of fixed term before end of term.
<i>Park to be used for another purpose</i>		
<i>Site to be used for another purpose</i>		
<i>Vacant possession required for works</i>		

OTHER REASONS		
End of fixed term	Application to SAT for vacant possession if necessary.  <i>Operator to notify a tenant that the agreement will not to be renewed.</i>	Fixed term
Frustration	Notice required – 7 days. Application to SAT for vacant possession if necessary.	Periodic and fixed term agreements
Hardship to operator	Application to SAT required	
Mortgagee possession	<i>Only applies to mortgages entered into before commencement.</i>	
Person with superior title entitled to possession	Application to SAT required for recovery of possession.	
<i>Death of a tenant</i>	<i>For site-only agreements, tenancy will terminate on the sale or removal of the home.</i>	

WITHOUT GROUNDS – ON-SITE ONLY		
<b>Without grounds<sup>2</sup> (on-site only) – must be justified in the circumstances</b>	Notice required – 60 days Application to SAT for vacant possession if necessary.	Periodic agreements.  No termination of fixed term before end of term.

<sup>1</sup> For long-stay agreements entered into after commencement - operators will not be permitted to terminate a fixed term agreement before the end of the term because the park is to be sold with vacant possession.

<sup>2</sup> The Act will be amended to provide that without grounds termination is only applicable to on-site agreements.

## RESIDENTIAL PARKS (LONG-STAY TENANTS) AMENDMENT BILL 2018

## Issues for consultation – Tenant meeting

**Disclosure**

The Act currently provides that a set of disclosure material must be provided to a long-stay tenant before signing a long-stay agreement.

***Proposed amendments in Bill***

The Act will be amended to require that these documents be provided to a tenant in relation to a site-only agreement at least 5 days before the agreement is entered into.

***Issues for discussion***

An exception to this 5 day requirement will be included if the long-stay tenant has a readily moveable home (i.e. a roadworthy caravan) and agrees to waive the 5 day requirement.

Should a tenant in these circumstances be provided with the documents before they occupy the site or before the agreement is signed?

**Content and form of long-stay agreements**

The *Residential Parks (Long-stay Tenants) Act 2006* (the Act) currently permits parties to a long-stay agreement to contract out of specific rights and obligations set out in the legislation.

In addition, while a long-stay agreement must currently be in writing and contain all the information and clauses outlined in the standard form agreements contained in the legislation, the agreement is not required to be in a standard form and can include additional terms.

***Proposed amendments:***

- Any form of contracting out of the standard rights and obligations will be prohibited.
- All of the standard terms for long-stay agreements, currently contained in Schedule 1 of the Act, will be moved into the body of the legislation and amended to provide clarity (if necessary).
- The regulations will include standard form long-stay agreements that all parties must use. Parties will still be able to include additional clauses but these must be clearly set out and labelled in a separate part of the agreement and must not be inconsistent with the Act.
- The State Administrative Tribunal (the Tribunal) will be given the power to order a park operator to prepare a long-stay agreement in the form of a prescribed standard form long-stay agreement if the prescribed agreement has not been used.

These amendments ensure the fundamental rights of tenants and the responsibilities of park operators as contained in the standard clauses are preserved. This amendment is also consistent with the residential tenancies legislation.

***Issues for discussion***

To what extent are your long-stay agreements currently in a form that is different to the prescribed form?

What types of matters do the variations or special conditions generally relate to?

Do mixed use parks generally use the prescribed form of agreement?

## Exit fees or voluntary sharing arrangements

While the Act prohibits the charging of entry fees, it does not prohibit the charging of fees when a tenant leaves a residential park.

It is understood that long-stay agreements sometimes provide for the payment of exit fees or other types of voluntary sharing arrangement in exchange for lower site fees or some other benefit. Exit fees and sharing agreements (sometimes referred to as shared equity or capital gain sharing arrangements) are not currently regulated by the Act.

### ***Proposed new provisions:***

The Bill amends the Act to regulate, rather than prohibit, shared equity agreements and the use of exit fees. In particular, the Bill requires greater transparency and disclosure in relation to these fees and provides for the following new requirements:

- The amount of the exit fee is to be as agreed between the individual parties at the time of entry into the agreement and cannot be varied during the term of the agreement without the consent of both parties to the agreement.
- No other fee, charge or premium will be recoverable from an outgoing long-stay tenant in addition to the exit fee at the end of the tenancy – for example, where a park operator charges an exit fee they will be prohibited from also charging a sales commission
- The disclosure document to be provided to all long-stay tenants prior to entering into their agreement, must include details of how the sharing arrangement/exit fee will be calculated and provide worked examples so the tenant understands how it works in practice.

### ***Issue for discussion:***

#### *What types of voluntary sharing arrangements are offered in the market?*

The Bill will include a definition of ‘voluntary sharing arrangement’, which will include agreements to:

- pay rent on a deferred basis
- pay the operator one of the following when the home is sold:
  - a share of the ‘capital gain’ (the difference between the price the home was purchased for and the price it was sold for)
  - a share of the total sale price
- pay a sum specified in the agreement if the home is sold or removed from the site.

### ***Questions:***

Are any other types of sharing arrangements offered in the market?

What is the benefit tenants received for agreeing to a sharing arrangement – for example is lower site rent payable?

Do parks currently offer tenants the option of a rent only agreement in all cases or do some parks include sharing arrangements in all of their long-stay agreements?



## Termination of long-stay agreements

Security of tenure is recognised as a key issue for park residents and is impacted by several factors, including the park operator's right to terminate a long-stay agreement. Some amendments will be made to the Act to clarify parties' rights and obligations in relation to termination. A summary of the existing and proposed changes to the termination provisions in the Act are attached to this document as **Attachment A**.

### ***Proposed amendments for termination:***

As outlined in Attachment A, the Bill incorporates the following key amendments relating to termination:

- Without grounds termination will no longer apply to site-only agreements and will only apply to on-site home agreements. For fixed term on-site agreements termination cannot occur before the end of the tenancy period, but periodic on-site agreements can be terminated prior to the end of the tenancy with 60 days notice.
- Without grounds termination for site-only agreements has been replaced with an expanded list of specific circumstances in which termination can occur. The following circumstances included in the Bill are generally those the Tribunal would have formerly determined to be justified or which are consistent with circumstances provided for in other jurisdictions:
  - The residential park is to be closed or used for a different purpose. If the different purpose requires development under the *Planning and Development Act 2005* then the park operator can only terminate if approval has been granted under that Act. The park operator is also required to notify the Commissioner for Consumer Protection 7 days before giving notice to tenants.
  - Vacant possession is required for works. Termination is conditional on the park operator giving the tenant evidence showing the basis upon which the works are to be carried out.
  - The long-stay site is to be used for a different purpose.
  - The tenant or the tenant's guest repeatedly interferes with the quiet enjoyment of the other tenants. A park operator can apply to the SAT for an order for termination if the park operator has given the tenant notice in the approved form asking the tenant or the tenant's guest to stop interfering with quiet enjoyment of the residential park; and despite the notice, the tenant or the tenant's guest has not stopped the interference.
- For mortgages entered into after the commencement of the changes to the Act, a long-stay agreement will not automatically terminate on mortgagee possession - mortgagees will be required to take on the obligations of the park owner in relation to park lease agreements.
- Any subsequent purchaser or successor in title of the residential park will be bound by those long-stay agreements entered into after the commencement of the changes to the Act.
- Long-stay tenants will be able to apply to the SAT for an order terminating their long-stay agreement on the grounds of undue hardship. The park operator already has this right
- The SAT can make an order terminating a site-only agreement upon the death of the tenant if the park operator is interfering with the process of the relocatable home being removed or sold.
- It is noted that a new provision will be included by a separate Bill allowing a tenant to terminate an on-site home agreement on the grounds of family violence. This amendment has also been made to the residential tenancy legislation and is considered to be in the public interest.

### ***Issues for discussion:***

Are the specific grounds for termination appropriate?

Are there any reasons an operator might seek to terminate a long-stay agreement that are not covered by these grounds?

Are there any types of tenant conduct (not covered by proposed provisions) that might justify termination?

### Park operator to provide notice prior to end of fixed term tenancy

#### **Proposed new provision:**

The Bill requires a park operator to give notice of whether they intend to extend or renew a fixed term agreement with the tenant. At this stage it is proposed that 60 days notice be required, prior to the end of the fixed term. The Bill also requires the park operator to provide the tenant with the proposed terms and conditions of any new agreement.

If the park operator does not give this written notice, the State Administrative Tribunal will have the power to suspend the operation of the order for termination and vacant possession by up to 60 days. This will ensure a tenant gets adequate notice that the agreement is ending and provides greater certainty for both parties at the end of a fixed term.

#### **Issues for discussion:**

What do park operators currently do regarding notice at the end of a fixed term?

The provision provides for 60 days notice – is this timeframe appropriate?

How much time is required in order to arrange to relocate a home?

Do problems often arise at the end of a fixed term – for example, where tenants have not made arrangements to relocate a home?

### Park operator continuing disclosure obligations

#### **Proposed new provisions:**

This new provision requires a park operator to notify a tenant as soon as practicable after becoming aware of a material change in relation to a residential park and to indicate how the tenant's use or enjoyment of the park will be affected.

- “Material change” is defined as: an arrangement or restriction that may materially affect the occupation or use of a site or other park premises in a park by the park operator or tenant.
- The Bill includes the following examples of material changes:
  - a proposed sale or redevelopment of the residential park;
  - a change in a requirement of a licence a park operator is required to hold under a written law that impacts on the tenant's use of the park; or
  - a change in the use of land for which an approval of development is required under the *Planning Development Act 2005*.

#### **Issues for discussion:**

Is the definition of ‘material change’ sufficiently clear?

### Sale of park home – appointing a sales agent

#### **Proposed new provision:**

The Bill clarifies that the tenant may appoint a person other than the operator to act as the selling agent.

#### **Issues for discussion:**

How are sales agents currently appointed? Do agreements apply for a specified period?

If sales agents (other than the operator) are appointed – what types of qualifications do they have? Are they licensed real estate agents?

## Disclosure to be given to purchaser of home

### ***Proposed new provision:***

New provision requires that a tenant or their agent who is selling a home on-site must give a potential purchaser a disclosure form. It is contemplated that the form will be approved by the Commissioner for Consumer Protection and be available on the Department's website. It is anticipated that the form will be based on a similar form currently used in the United Kingdom and will highlight key information such as:

- the fact the sales agreement between the home owner and the purchaser for the sale of the park home is separate from the agreement between the park operator and the purchaser to acquire the right to occupy the site;
- the fact the purchaser will not acquire the land upon which the park home is situated;
- the fact the purchaser will have to separately negotiate an agreement with the park operator for the right to occupy the site;
- details of the park operator;
- key terms of the existing long-stay agreement.

It is further anticipated that if the disclosure form is not provided by the seller to purchaser, the purchaser will have the right to go to the Tribunal to seek an appropriate order (e.g. terminate the contract, seek compensation etc).

### ***Issues for discussion:***

What sort of information are incoming tenant currently provided when purchasing a home in the park?

Have tenants experienced issues where they were not fully informed of the nature of the long-stay tenancy?

## Sale of home conditional upon assignment/entry into long stay agreement

### ***Proposed new provision:***

The Bill provides that it is a condition of the contract for the sale of the relocatable home that the park operator must (within a reasonable time after the sale contract has been entered into) enter into a long –stay agreement with the buyer or assign the long-stay tenant's interest to the buyer.

### ***Issues for discussion:***

The provision currently provides that the park operator must enter into a new long-stay agreement or assign the existing tenant's interest 'within a reasonable time'. What would you consider to be a 'reasonable' timeframe? If appropriate, it may provide greater certainty to include an actual timeframe in the provision.

## Park rules

The Act does not currently include specific provisions about the application of park rules. There is no requirement to consult tenants in relation to amendments to park rules and any disputes are currently dealt with by the Tribunal under its broad jurisdiction to deal with disputes under the legislation.

### ***Proposed amendments:***

New provisions about park rules have been included to clarify obligations of parties and:

- require park rules be fair and reasonable and clearly expressed;
- require park operators apply the rules consistently, fairly and reasonably;
- require park operators to take reasonable steps to ensure tenants comply; and
- give tenants the specific right to apply to the Tribunal in relation to an unreasonable park rule.

It is proposed that the regulations will provide greater detail about the way the park operator can amend the park rules. Further consultation will be undertaken in relation to these matters when amendments to the regulations are drafted.

### ***Issues for discussion:***

The current definition of 'park rules' in the Act includes rules made by a park liaison committee – are rules often made by the park liaison committee?

## Children living on agreed premises

The Act currently provides that a person must not refuse to make a long-stay agreement with an individual on the grounds that it is intended that a child will live on the agreed premises unless the residential park is a lifestyle village (or where the licence under the *Caravan parks and Camping Grounds Act 1995* permits the park operator to include such a term).

### ***Proposed amendments in Bill***

The concept of lifestyle village is being removed from the Act and the Bill provides that a long-stay agreement may include a term prohibiting children only if the site is within an age-restricted park. An 'age-restricted park' is defined to mean a park which is occupied by persons of a particular age.

### ***Issues for discussion***

How are age restrictions currently included in the long-stay agreements at the moment? How strictly are these restrictions enforced – for example, do all tenants need to be over a certain age?

## ATTACHMENT A – SUMMARY OF GROUNDS FOR TERMINATION BY PARK OPERATOR

Proposed new provisions are shown in shaded cells. Proposed amendments are shown in italics.

TERMINATION WHERE TENANT IS AT FAULT		
Non-payment of rent	Default notice and termination notice. Application to SAT for vacant possession if necessary.	Periodic and fixed term agreements
Breach of long-stay agreement <i>Obligations clarified in relation to maintenance and repair obligations</i>		
Tenant causing damage or injury	Application to SAT required.	
<i>Tenant repeatedly interferes with quiet enjoyment of park by other tenants</i>	Notice to cease and application to SAT.	
Tenant abandons premises	Application to SAT required.	

TERMINATION RELATED TO USE OF PARK		
Sale of park with vacant possession <sup>3</sup>	Notice required – 180 days for site-only and 60 days for on-site. Application to SAT for vacant possession if necessary.	Periodic agreements. No termination of fixed term before end of term.
<i>Park to be used for another purpose</i>		
<i>Site to be used for another purpose</i>		
<i>Vacant possession required for works</i>		

OTHER REASONS		
End of fixed term	Application to SAT for vacant possession if necessary. <i>Operator to notify a tenant that the agreement will not be renewed.</i>	Fixed term
Frustration	Notice required – 7 days. Application to SAT for vacant possession if necessary.	Periodic and fixed term agreements
Hardship to operator	Application to SAT required	
Mortgagee possession	<i>Only applies to mortgages entered into before commencement.</i>	
Person with superior title entitled to possession	Application to SAT required for recovery of possession.	
<i>Death of a tenant</i>	<i>For site-only agreements, tenancy will terminate on the sale or removal of the home.</i>	

WITHOUT GROUNDS – ON-SITE ONLY		
<b>Without grounds<sup>4</sup> (on-site only) – must be justified in the circumstances</b>	Notice required – 60 days Application to SAT for vacant possession if necessary.	Periodic agreements. No termination of fixed term before end of term.

<sup>3</sup> For long-stay agreements entered into after commencement - operators will not be permitted to terminate a fixed term agreement before the end of the term because the park is to be sold with vacant possession.

<sup>4</sup> The Act will be amended to provide that without grounds termination is only applicable to on-site agreements.

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

## EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED

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

**EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED**

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



**EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED**

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

**EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED**

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

**EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED**

		Implementation	
		Bill	Other
11.2	<p><b>Compensation on termination of a periodic tenancy</b></p> <p>It is recommended that the right to compensation not be extended to apply to periodic agreements. Clear information about the unavailability of compensation for periodic tenancies should be included in disclosure information.</p>		No amendment required. Disclosure material will be updated.
11.3	<p><b>Compensation at the end of a fixed term tenancy</b></p> <p>It is recommended that the right to compensation not be extended to apply at the end of a fixed term agreement. Clear information as to a tenant’s potential liability for relocation costs at the end of a fixed term should be included in disclosure information. A park operator would also be required to give a home owner adequate notice (for example, 180 days) that the tenancy is to end at the expiry of the fixed term.</p>	✓	
11.4	<p><b>Compensation on relocation within a park</b></p> <p>It is recommended that the RPLT Act be amended to include a specific provision in the RPLT Act to give tenants a right to seek compensation for costs of relocating within a park when required to do so by the park operator.</p>	✓	
<b>PART 12 - DEATH OF A TENANT – LIABILITY OF TENANT’S ESTATE</b>			
12.1	<p><b>Renters</b></p> <p>It is recommended that the RPLT Act be amended to provide that where a sole renter dies, the long-stay agreement terminates upon their death. Any goods remaining in the park home upon the death of the tenant would be dealt with as abandoned goods. The current advertising requirements associated with abandoned goods will be reviewed.</p>	✓	
12.2	<p><b>Home owners</b></p> <p>It is recommended that the RPLT Act be amended to provide that on the death of a home owner the long-stay agreement continues until the home is sold or removed. The home-owner’s estate would continue to be liable to pay rent. However, the park operator and the tenant’s estate will be permitted to agree to a deferral of the payment of rent or enter into an arrangement for reduced rent (i.e. by relocating the home in the park).</p> <p>It is recommended that the RPLT Act also be amended to provide that the home owner’s estate may apply to the SAT to terminate a long-stay agreement (therefore ending the estate’s liability to pay rent), or to make such other</p>	✓	

## EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED

		Implementation	
		Bill	Other
	order as appropriate, if the SAT is satisfied that the park operator is interfering with or obstructing the estate in its endeavours to sell the park home.		
	<b>PART 13 - TERMINATION OF TENANCY FOR DAMAGE TO PROPERTY AND VIOLENT BEHAVIOUR</b>		
13	It is recommended that no change be made to the current provisions of the RPLT Act in relation to termination of tenancy for damage to property and violent behaviour.		No amendment required.
	<b>PART 14 - RENT VARIATION</b>		
14.1	<b>Frequency of rent increases</b> It is recommended that no change be made to the current provisions of the RPLT Act in relation to the frequency of rent reviews.		No amendment required.
14.2	<b>Method of varying rent</b> It is recommended that the RPLT Act be amended to require that the method of rent review be clearly specified in all long-stay agreements; market reviews of rental will not be permitted.	✓	
14.3	<b>Unforeseen costs</b> It is recommended that the RPLT Act be amended to permit park operators to increase rent for specified purposes, such as a significant increase in the operational costs in relation to the park (including significant increases in taxes, rates or utilities costs) or unforeseen significant repair costs in relation to the park.  Sufficient notice (for example, 60 days) would be required to be given to tenants, including details of the increase and adequately outlining the justification for the increase. If the tenants do not agree to the proposed increase, the park operator would be able to apply to the SAT for an order for the increase to apply.	✓	
	<b>PART 15 - FEES AND CHARGES</b>		

**EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED**

		Implementation	
		Bill	Other
15.1	<p><b>Cost recovery in relation to fees</b></p> <p>It is recommended that the RPLT Act be amended to specifically provide that fees for items other than rent should be charged on a cost recovery basis only and to give the SAT the jurisdiction to determine disputes in relation to such matters. The RPLT Act Regulations will be amended to remove the \$200 cap on screening fees and instead impose a 'reasonable' amount requirement.</p>	✓	
15.2	<p><b>Costs of preparing a long-stay tenancy agreement</b></p> <p>It is recommended that the RPLT Act be amended to provide that the park operator must bear the costs of preparing a long-stay agreement and that this requirement cannot be varied by the long-stay agreement.</p>	✓	
15.3	<p><b>Visitors' fees</b></p> <p>It is recommended that no amendment be made to the RPLT Act in relation to the charging of visitors' fees. Visitors' fees must be clearly set out in the long-stay agreement and disclosure material. It is recommended that a requirement be introduced that the amount of the visitors' fee must be reasonable and be consistent with the principle of cost recovery.</p> <p>It is recommended that the RPLT Act be amended to provide that a carer's visit will be exempt from the payment of visitors' fees.</p>		Requirements in relation to visitors' fees will be set out in the regulations.
15.4	<p><b>Entry fees</b></p> <p>It is recommended that the current prohibition on the charging of entry fees continue.</p>		No amendment required.
15.5	<p><b>Exit fees</b></p> <p>It is recommended that the RPLT Act be amended to provide that:</p> <ul style="list-style-type: none"> <li>• a park operator would be permitted to offer sharing agreements and charge exit fees, however there must be full transparency in relation to the terms of those arrangements which must be fully disclosed to the prospective tenant prior to their occupation;</li> <li>• the disclosure statement must include the basis upon which the sharing agreement and/or exit fee has been calculated. The park operator will also be required to provide worked examples that provide the</li> </ul>	✓	Amendment to regulations also required.

**EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED**

		Implementation	
		Bill	Other
	<p>costs involved in realistic scenarios so that the tenant is able to understand how the sharing agreement and/or exit fee would operate in practice;</p> <ul style="list-style-type: none"> <li>• a cooling-off period will apply to allow a prospective tenant time to consider the sharing agreement and/or exit fee material further before they commence living in the park;</li> <li>• an exit fee will be the only fee recoverable from an outgoing tenant. No other fee, charge or premium will be recoverable, other than the recovery of costs incurred in providing services such as selling agent or those which directly relate to obligations under the long-stay agreement. An operator will not be prevented from charging for their expenses relating to the marketing and sales service a park operator provides if appointed the selling agent for the home, even where a sharing arrangement/exit fee is in place. However, an operator will not be able to charge a set fee or percentage of the sale price, which does not reflect work done in the sale of the home, in addition to an exit fee;</li> <li>• in instances where a long-stay agreement is to be entered into with an existing home owner, or where the seller is not the operator of the residential park in which the park home is located, a park operator will be prohibited from only offering a sharing arrangement. In these circumstances, the park operator will be required to also offer a rent only long-stay agreement that does not include a sharing arrangement;</li> <li>• no standard form or clauses will be introduced in relation to exit fees/sharing arrangements. However, the parties will be prohibited from excluding the provisions of the RPLT Act or agreeing to terms inconsistent with the RPLT Act in any agreement that provides for sharing or exit fees; and</li> </ul> <p>where it can be shown that prior disclosure did not occur, or where the park operator attempts to charge an outgoing long-stay tenant other charges, fees or premiums in addition to the exit fee that do not directly relate to an obligation under the long-stay agreement, any such terms or amounts will be invalid.</p>		
15.6	<p><b>Paying for electricity</b></p> <p>It is recommended that no amendments be made to the RPLT Act, however education material (fact sheets) for park operators and tenants would be produced about the rules regarding the on-selling of electricity by park operators, including requirements to provide information about the charges and a list of relevant agencies that could assist in disputes regarding these matters. In addition, the proposed new disclosure statement would also highlight the fact that charges for electricity consumed by the tenant (if the tenant has a separate electricity meter) must be in accordance with the relevant electricity by-laws as exist from time to time.</p>		No amendment required. Community education will be undertaken.

**EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED**

		Implementation	
		Bill	Other
<b>PART 16 - MAINTENANCE AND SHARED FACILITIES OR PREMISES</b>			
16.1	<p><b>Services and facilities promised by the park operator</b></p> <p>It is recommended that the RPLT Act be amended to give the SAT the power to make the following orders where a park operator has not provided services or facilities promised as part of pre-contractual negotiations:</p> <ul style="list-style-type: none"> <li>• an order requiring the park operator to provide the facility or service (specific performance);</li> <li>• an order that the park operator pay the tenant compensation;</li> <li>• an order for a reduction in the rent payable; or</li> <li>• in circumstances where the tenant would not have entered into the contract had the tenant known that the facility or service would not be provided, an order rescinding (cancelling) the contract.</li> </ul>	✓	
16.2	<p><b>Ongoing maintenance and repair</b></p> <p>It is recommended that the RPLT Act be amended to impose an obligation on the park operator in relation to maintenance and repair and to give the SAT the specific power to make an order requiring that work be carried out as soon as is reasonably practicable and to a standard that is reasonable in the circumstances. The SAT would be required to take into account the age, character and prospective life of the facilities. It may also be appropriate for the SAT to take into account the level of rent paid by tenants.</p>	✓	
16.3	<p><b>Transparency in relation to maintenance costs</b></p> <p>It is recommended that no annual reporting requirements be introduced in relation to expenditure on maintenance and capital.</p>		No amendment required.
16.4	<p><b>Funding of capital improvements</b></p> <p>It is recommended that no mechanisms be included in the RPLT Act for the funding of capital improvements.</p>		No amendment required.
<b>PART 17 - SALE OF HOMES</b>			
17.1	<p><b>The right to sell a home while it is situated on the park</b></p> <p>It is recommended that the RPLT Act be amended to provide home-owners with a right to sell a home on-site. This right would not be able to be excluded or limited in the long-stay agreement. Tenants would be required to notify</p>	✓	

**EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED**

		Implementation	
		Bill	Other
	the park operator before offering the home for sale and would be required to comply with reasonable restrictions regarding display of 'for sale' signs (for example, size and location).		
17.2	<p><b>Interference in sale by park operator</b></p> <p>It is recommended that the RPLT Act be amended to prohibit a park operator from interfering with or hindering the sale of a park home by a home owner.</p>	✓	
17.3	<p><b>Useful life of a park home</b></p> <p>It is recommended that the RPLT Act be amended to impose an obligation on the seller of the home to advise of the date of manufacture. It is proposed that a standard information sheet be developed for use on the sale of a home. This document would include key information about the home (including the date of manufacture) and would be provided by the seller or their agent to the purchaser.</p>		Information to be included in buyer disclosure document.
17.4	<p><b>Extent of park operator involvement in the sale process</b></p> <p>It is recommended that it is a condition of a sale between a home-owner and a purchaser that that the park operator consents to a lease agreement with the purchaser. The condition would not apply in those instances where a home is to be removed from the site following sale. If the park operator does not agree to enter into a tenancy agreement on reasonable terms, the purchaser would have the option of cancelling the contract. The park operator would be required to provide a copy of the proposed long-stay agreement and disclosure material to the purchaser prior to entry into the tenancy agreement.</p>	✓	
17.5	<p><b>Creation of tenancy rights for the purchaser</b></p> <p>It is recommended that the RPLT Act be amended to require a park operator to enter into a new site agreement with a purchaser. However, the park operator would not be required to enter into an agreement if the operator has reasonable grounds for declining or if the operator cannot reasonably reach agreement with the purchaser as to the terms of the site agreement.</p>	✓	
17.6	<p><b>Appointment of park operator as the selling agent</b></p> <p>It is recommended that the RPLT Act be amended to provide that the park operator is prevented from requiring a home owner to appoint the operator or a person nominated by the operator as selling agent. As noted in 15.1</p>	✓	



**EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED**

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

**EXTENT TO WHICH RECOMMENDATIONS OF STATUTORY REVIEW IMPLEMENTED**

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