Residential Parks (Long-stay Tenants) Amendment Bill 2018
Standing Committee on Legislation

List of questions for hearing with Caravan Industry Association Western Australia at 11am on Friday 1 March 2019

1.1 I note in your submission you have set out 15 changes you wish to be made to various sections of the Bill. The Committee has some questions on your submission, but firstly, could you inform the Committee whether you have put these proposed amendments previously to the Government as part of the consultation process on the Bill and, if so, in general terms, what the Government's response was?

We did not have the opportunity to review and provide comments on the drafting of the Bill prior to it being introduced (although we have previously had the opportunity to make submissions on discussion papers in terms of the broad changes to the Act and the intent behind the changes to the Act).

In August 2018 CIAWA requested that Department of Mines, Industry Regulation and Safety provide CIAWA with copies of the draft legislation and the proposed draft standard tenancy agreements so that CIAWA could provide comment on them.

In response, the Department advised that it was not standard practice to provide a copy of a draft Bill to individual stakeholders prior to introduction into Parliament, and that CIAWA's concerns (ie the concerns CIAWA had previously raised based on the Department's descriptions of proposed amendments) had been noted and addressed wherever possible.

We emailed Amanda Blackwell of the Department of Mines, Industry Regulation and Safety a copy of our proposed amendments to the Bill on 8 February 2019, following a conversation between Amanda and one of our members.

1.2 I refer to page 2 of your submission where you propose changes to proposed new section 71A (order to terminate agreement for repeated interference with quiet enjoyment) so that the State Administrative Tribunal may also terminate a long-stay agreement where a long-stay tenant or tenant's guest repeatedly threatens or abuses the park operator or an employee.

1.2.1 Could you explain why you don't believe threatening or abusive behaviour would constitute interference with another's quiet enjoyment of a residential park and therefore be covered by the existing wording?

As currently drafted, section 71A only allows a park operator to apply to SAT to terminate an agreement if a tenant interferes with *another tenant's* quiet enjoyment of the residential park.

It does not relate to the park operator's quiet enjoyment of the park and the park operator has no ability to apply for termination due to acts taken by a tenant towards the park operator or its employees.

Our proposed change relates to tenants threatening or abusing the park operator or the park operator's employees.

1.2.2 Can you cite any examples where a park operator has not been successful in terminating an agreement on the basis of a breach of the right to quiet enjoyment under the existing Act where threatening or abusive behaviour has occurred?

As outlined above, only tenants have the right to quiet enjoyment of the park, and park operators are not presently able to terminate an agreement on the basis of a

breach of the right to quiet enjoyment under the existing Act where threatening or abusive behaviour has occurred.

We are seeking to protect park operators and employees from threating or abusive behaviour.

1.3 I refer to page 4 of your submission where you propose changes to proposed new section 10C so that it states that a long-stay tenant will also continue to be bound by the long-stay agreement as well as the park operator's successor in title.

You also propose that successors in title should only be bound by the written terms of an agreement.

Could you explain the basis of your concern that long-stay tenants may not continue to be bound by a long-stay agreement after a park operator's is succeeded by a successor in title?

Under s68 of the Transfer of Land Act, on the change of registered proprietor of land upon which a park is situate, all unregistered leases for a term of over 5 years will be destroyed.

New section 10C (as proposed by the Bill) only states that a long-stay agreement "*binds the park operator's successors in title as if the successors in title had entered into the agreement*".

It will bind operators but not tenants.

In our view, it is in the interests of both the park operator and the tenant that they continue to be bound by their long-stay agreement so all parties have certainty if the residential park is sold to a new operator. Our proposed changes seek to clarify this.

1.3.1 Could you explain why you don't believe there is a right under the existing Act for a claim to be made against a park operator for breach of a term made under an oral agreement where the park operator is succeeded by a successor in title?

We acknowledge tenants have the ability to take action against a park operator for breaches of a verbally agreed term. The purpose of our proposed section 10C(2) is to make clear that tenants will still have this right against the person that made it (since on the present drafting, we think it likely that the lease will only bind the park operator's successors in title – and not the park operator who made the representations).

1.4 I refer to page 5 of your submission where you propose an amendment to proposed new section 12(1)(e), which sets out restrictions on amounts park operators may charge.

I note your amendment enables a park operator to require or receive a fee for a service or facility that is the lesser of the owner's cost of providing the service together with a 'reasonable profit component' and the cost of the long-stay tenants acquiring the equivalent service or facility elsewhere.

1.4.1 Could you give examples of services where you believe a reasonable profit component should be allowed?

Examples include gardening services and general repairs and maintenance, which park operators can generally provide or arrange for residents at a more affordable price than tenants could otherwise obtain if they were to approach a third party service provider directly. This is on the basis that the park operator may be able to get a

quote for services for multiple homes at once, and therefore reduce the overall cost by eliminating multiple call-out fees, etc.

1.4.2 How would the cost of an equivalent service be brought to the attention of an operator?

The tenant is free to approach any third party providers and obtain quotes for the services/facilities. If the tenant finds a lower quote than what the operator is offering, then we expect the tenant will bring this to the operator's attention and the operator will be obliged to charge that lower rate (provided it is for the same service or facility which the operator is providing) or the tenant will be free to obtain the service from that other provider.

1.4.3 What would you regard as a 'reasonable profit component'?

In calculating this, the operator will have regard to the market value of the service/facility. This will depend upon the nature of the service or facility being provided. In some instances it may be a dollar amount, and in others it may be a percentage return.

1.4.4 Considering the type of fee is something that would need to be prescribed and has presumably yet to be, do you believe your proposed amendments should be made to the Bill or wait until the fees have been prescribed?

We consider our proposed changes should be made regardless of whether the fee has been prescribed.

Without the proposed change, once fees are prescribed, operators will be limited to charging on a cost-recovery basis or a reasonable amount (with which is able to be charged in any instance being unclear, and what a 'reasonable amount' is being unclear).

As a result, if the change is not made operators are unlikely to have any incentive to provide additional services.

1.5 I refer to page 6 of your submission where you propose amendments to proposed new section 20A, which provides that a park operator must give long stay tenants who are party to a site-only agreement written notice stating how the tenant's use or enjoyment will be affected as soon as reasonably practicable after the park operator becomes aware of a material change. A material change is defined as an arrangement or restriction that might materially affect the occupation or use of a site by the operator or tenant.

Out of a concern the provision as drafted may require operators to continuously advise tenants of anything that might possibly occur that could materially affect them, you propose

that the notification requirement in this provision only apply to material changes that are likely to occur.

1.5.1 Could you give some guidance on how it will be decided whether a material change will be likely to occur? Will this be a decision left to the park operator?

On the current drafting, we think the obligation and decision is with the operator.

We think this is reasonable, and we do not propose to change it.

1.5.2 Doesn't the use of the word 'arrangement' or 'restriction' in the provision already make it clear that it is referring to a concrete arrangement or a definite restriction rather than something which is being proposed or suggested?

As outlined in our submission, an "arrangement" could include any arrangement (including prospective arrangements) which never comes to pass (or which is never even likely to come to pass).

We used the example of a park operator entering into discussions with a potential buyer to purchase the residential park, even though the park operator and buyer may never reach a binding agreement to that effect. In these circumstances, we do not think it would be reasonable or necessary for the park operator to disclose to tenants every discussion it has with a potential buyer - unless those discussions progress to a binding agreement which could have an impact on the tenant's use of their residential site.

We consider that if the wording were amended to 'concrete arrangement' or 'definite restriction' as proposed that could also address the issue.

1.6 I refer to page 7 of your submission where you propose a new subsection be added to section 21, which removes the right of operators to charge a separate bond for keys and access devices. Your proposed subsection would permit operators to charge tenants for replacement access devices where they have been lost or damaged.

I note the Explanatory Memorandum to the Bill states section 21 is being amended for consistency with the *Residential Tenancies Act 1987*. I also note this would be a fee that would need to come within the scope of proposed new section 12 and may need to be prescribed.

1.6.1 Has the Government indicated that the payment you propose will be a prescribed fee under section 12(1)(e)(i) or otherwise permitted under section 12?

No (and for the purposes of section 12 of the Act, we consider the fee should be authorised under section 21 of the Act).

1.6.2 Why should the position of park operators under the Bill be any different to the position of lessors under the *Residential Tenancies Act 1987*?

We consider a residential park to be different to residential premises for a number of reasons. Relevantly, a residential park (and in particular lifestyle villages) will often have gates or other access points which require a tenant to have various keys, access cards and remote control devices, whereas a tenant under the Residential Tenancies Act 1987 is only likely to need a single key to access their residential premises.

Similarly, many parks are used by tourists on a short-term basis who, without the knowledge that they are responsible for the cost of damaged or lost keys and access cards, may simply fail to return keys and cards on their departure from the park. We do not think it is reasonable for the park operator to have to cover the costs of damage to keys, access cards and other remote control devices if they are lost or damaged by the tenant.

1.7 I refer to pages 9 to 10 of your submission where you propose amendments to proposed new section 63C, which provides that a person who is occupying premises (a resident), but is not

named as a long-stay tenant under the long-stay agreement, may apply to the State Administrative Tribunal to be recognised as a tenant in respect of the agreed premises. This is in circumstances where the resident has asked to be named as a tenant and the park operator has refused.

You propose restricting this section to residents that are staying on the premises with the permission of the park operator and that the State Administrative Tribunal be limited to adding residents to a long-stay agreements on its existing terms and conditions.

1.7.1 Considering your proposed amendment to 63C(1)(a), in what circumstances would a park operator refuse to vary a long-stay agreement to add a resident as a long-stay tenant who is already residing in the agreed premises with the permission of the park operator?

Circumstances where a park operator may wish to refuse to add a resident as a long-stay tenant include:

(a) where a residential site is only designed to house a specific number of people and various facilities (such as catering and sewerage) are unable to accommodate additional people;

(b) where a long-stay tenant (who has occupied the site for a long time) subsequently develops a relationship with a person who is not a long-stay tenant but who nonetheless may begin to claim ownership of the residential site. This can potentially lead to disputes between the parties and the park operator, and can even result in the tenant's family becoming involved and park operators may wish to avoid this;

(c) where an operator is happy for someone to live in the premises (as an occupant) but is not happy for that person to be a tenant (which will generally be where the person does not satisfy the operator's tenancy criteria).

1.7.2 Given the park operator, under the proposed new section, could make submissions to the State Administrative Tribunal about why the resident is unsuitable to be recognised as a long-stay tenant, why do you believe your proposed amendment is required?

The park operator may not always be aware that a person is residing in the premises (and will therefore not have had the opportunity to allow the person to reside there). New section 63C, as drafted, could allow people to by-pass the park operator entirely and become a resident of the park on application to SAT.

Additionally, on the proposed wording we think it is possible that a person might be determined to be 'suitable to be recognised as a long-stay tenant' as determined by SAT, while not satisfying the operator's usual requirements for the grant of a lease,

and we think these requirements should be required to be considered as part of the consideration.

We think this consideration is important (particularly in the context of lifestyle villages) where tenants will often have chosen to enter into a lease on the basis that all tenants satisfy the relevant criteria.

For clarity, we are not asking that the criteria be definitive – only that SAT is required to take them into account.

1.7.3 If a person is not residing at the premises with the permission of the park operator, would not the operator take steps to remove them and they would therefore not be covered under 63C(1)(a) as they would not be residing on the premises?

This may not always be possible if the park operator is unaware a person is residing on the premises without the park operator's permission, or if the terms of the relevant agreement allow for a person to reside in premises without permission.

In addition, an operator's ability to remove people from sites is practically limited under the Act, so that it is generally difficult to remove someone from the site once they are there.

As a result, we consider there will be many circumstances where occupants are residing within premises without permission.

1.7.4 Noting the Explanatory Memorandum for the Bill states 63C is consistent with section 59C of the *Residential Tenancies Act 1987*, why should there be a different approach in this Bill?

As mentioned above, we consider a residential park to be relevantly different to residential premises and the Bill should not necessarily reflect the *Residential Tenancies Act 1987*.

In particular, a park operator is required to try to protect the interests and right to quiet enjoyment of all tenants at the park (and so must balance the interests of an applicant against the interest of all other tenants in a manner that is relevantly different from a landlord of residential premises).

Various different factors could affect whether a park operator allows a resident to stay in the park, including the behaviour of a particular resident and the way in which that

behaviour may affect other tenants of the park, or whether the park is a lifestyle village (which is designed for residents having some quality in common).

1.8 I refer to page 12 of your submission where you propose an amendment to proposed amended section 20, which clarifies the circumstances in which children are permitted to occupy a residential site.

You propose inserting the word 'ordinarily' in subsections 20(1) and 20(1)(a)(ii) to overcome what you describe as a possible unintended effect of the provision as drafted that children are not allowed to live on the premises even on a temporary basis.

1.8.1 Could you clarify why the insertion of the word 'ordinarily' in the section would address your concerns?

The word "ordinarily" limits the total prohibition on children occupying a site.

Without the inclusion of this word, a long-stay agreement can only include a prohibition on children occupying the premises if all other long-stay agreements contain a prohibition on children occupying the premises.

The end result is that on the proposed wording if a single long-stay agreement does not prohibit children living on the premises, the operator can never again include a prohibition on children occupying the premises (at all).

1.8.2 Is it your opinion that 'occupy a site' and 'live on the agreed premises' would include children visiting, such as during the school holidays?

Yes, as because we think "occupy" and "live" are not clearly defined.

1.8.3 Do you have members who operate parks that come within the scope of 20(1)(a)(i) and (ii) where there have been or may be difficulties allowing children to visit long-stay tenants because they were considered to be living on the premises?

We think it is less of a difficulty in allowing children to visit and more of a difficulty in allowing children to stay for longer periods. As set out above, on the current drafting we think that were the operator to allow this in a given instance, then on the current drafting it would prevent the operator from entering into leases that restrict children from the park in future.

1.9 I refer to page 14 of your submission, where you propose amendments to proposed new section 10A, which provides for a prescribed standard-form agreement that would permit a

park operator to apply to the Minister to enter into a long-stay agreement in a form other than the prescribed standard-form agreement.

1.9.1 As the prescribed standard-form agreement has, as I understand, yet to be published, would it not be more appropriate to wait until this has occurred and then propose other types of agreements if it does not suit all parks and operators?

We do not think this is appropriate, as we think that if the Act does not include an exemption mechanism, there will be no mechanism for operators to apply to be able to use a different form of agreement.

We think that not including an exemption mechanism is (for all practical purposes) deciding that all operators of all parks must use the standard agreement.

1.9.2 Are you aware if different types of agreements are permitted in other legislation, such as the *Residential Tenancies Act 1987*? If not, what is your view on why park operators require different agreements?

There are a wide variety of parks offering a wide variety of kinds of accommodation.

These can range from a small number of long-stay sites within traditional caravan parks to all sites within lifestyle villages.

Parks, and the way in which they are operated, can vary significantly and some will inevitably offer better terms, services and facilities than others.

Because of the range and width of parks and accommodation options, it is almost that any standard form agreement will be a compromise document that suits the lowest common denominator of parks.

This may prevent park operators from offering particular terms, services and facilities which could lower the overall standard of residential parks.

It will also mean that park operators who may wish to craft agreements suited specifically to their parks and customer-base are unable to do so.

1.9.3 Do you envisage that any agreement a park operator submits to the Minister that differs from the standard form would contain terms that are inconsistent with terms which are proposed to be prohibited under the Bill? If not, what types of terms do you have in mind?

We do not consider that park operators would be seeking to submit agreements that contain terms inconsistent with those prohibited under the Bill.

By way of example, we consider operators may want to include terms which:

(a) impose an age restriction on a tenant occupying a residential site;

(b) allow the provision of services of a higher quality than included in other agreements; or

(c) allow a park operator to remove a restriction which might usually benefit the park operator (such as the right to relocate a tenant to a new site in the park).

We are also aware that some members want the freedom to offer leases that are consistent with the standard form of agreement, but re-written and re-arranged so as to be more consistent with their operations and more clearly understood by their customer-base.

1.10 I refer to page 17 of your submission where you propose an amendment to proposed new section 62D, which provides a long-stay tenant with the ability to apply to the State Administrative Tribunal for relief if a park operator has made a pre-contractual representation

about the provision of facilities or services at the park and the facilities or services are not provided.

You propose restricting the power of the State Administrative Tribunal to order a park operator to perform a representation to circumstances where compensation is not an adequate remedy.

1.10.1 As each of the orders set out in 62D(2) are expressed in the alternative ('or' appears at the end of each subsection), would this not provide for what you are seeking – that the Tribunal cannot make both an order for compensation as well as an order for the park operator to take action in performance of the representation?

As currently drafted, the Tribunal may decide in the first instance to order performance of the representation although the park operator may be unable to achieve this.

We are suggesting that the Tribunal must make an order for payment of compensation (if it provides an adequate remedy) *before* it can make an order for the park operator to perform the representation.

For example, if a tenant claims that a park operator verbally agreed to completely replace all facilities within the park, we are saying that the tribunal must consider whether the tenant could be adequately compensated by damages before ordering the park operator to completely replace all facilities within the park.

1.11 I refer to pages 18 to 19 of your submission, where you propose amendments to amended section 42, which proposes to restrict the ability for a park operator to terminate a long-stay agreement without grounds to on-site home agreements.

You request the provisions of the current Act remain to enable termination without grounds for all long-stay agreements.

1.11.1 Could you give examples of what situations may arise justifying termination by a park operator of tenants party to an site-only agreement which are not covered by other provisions?

Under the current Act, tourists can visit the park and stay for as long as they want under a periodic tenancy, so long as they are staying at the park for a holiday.

The Bill provides that any agreement which allows a person to occupy a residential site for 3 months or more will be taken to be bound by a long-stay agreement.

Over time, we consider that periodic leases under the Act have ceased to be periodic, in the sense that they are no longer leases which can be terminated by either party at the end of the period; they have now become leases that the tenant can walk away from and the operator can only terminate for cause.

In our experience, tourists may want to stay in a park for more than 3 months (on the basis they are on holiday) but do not want to be confined to a long-stay agreement. Park operators are typically happy to allow tourists to stay in the park on that basis, provided the park operator has the ability to terminate the agreement on 180 days' notice as is currently allowed. If park operators do not have this ability to terminate, it will dissuade them from allowing visitors to stay in the park on a short-term basis as

there is a risk of those visitors becoming long-stay tenants whose agreements the park operator cannot terminate.

Questions on notice:

Hon PIERRE YANG: Just on that point, do you know roughly what percentage are holidaymakers and what percentage are long-term residents?

We have not been able to obtain specific data on this. The data we have been able to obtain (and its sources) are:

The Brighthouse report (2012) estimates 132 total sites per caravan park (88% being for tourists).

There are an estimated 182 caravan parks in WA (BDO, 2016), which would mean an estimated 20,800 total tourist sites and 2,800 long term sites

In 1996 the Bureau of Statistics estimated 7960 people living permanently in Caravan Parks Since that time it is our industries estimate that approximately 500 people per year moved into caravan parks until 2002 = 3000 additional people living permanently

With the introduction of dedicated permanent parks, the numbers of people moving into parks as permanent residents has been reduced to approximately 50 per year from 2002 to 2019 – being offset with Permanent sites being replaced with tourist sites. = 1275

With the introduction of dedicated permanent Parks such as National Lifestyle Villages, Riverside Gardens and Mandurah Gardens = Approximately an additional 5000 people living in parks.

Summary 7960+3000+1275+5000 Total = approximately 16,925 Permanent Residents in Caravan Parks

Hon PIERRE YANG: Could we please have a question on notice to get a bit more information on the accreditation rating that you have referred to? Is that all right?

No occupational licensing, certification or specific legislative requirements apply to being a caravan and camping grounds manager.

CIAWA offers the following (optional) training courses and accreditations which are part of a joint initiative of the Australian and State and Territory Governments:

SIT20216 - Certificate II in Holiday Parks and Resorts

- Staff level – e.g. housekeeping assistant, junior handyperson, office assistant
- Course overview: https://training.gov.au/Training/Details/SIT20216)

SIT30416 - Certificate III in Holiday Parks and Resorts

- Staff level – e.g. grounds person, handyperson, housekeeper, receptionist
- Course overview: https://training.gov.au/Training/Details/SIT30416

SIT40316 - Certificate IV in Holiday Parks and Resorts

- Staff level – e.g. assistant manager, front office supervisor, grounds and maintenance supervisor, operations supervisor
- Course overview: https://training.gov.au/Training/Details/SIT40316

SIT50216 - Diploma of Holiday Park and Resort Management

- Staff level – e.g. manager, operations manager, park manager
- Course overview: https://training.gov.au/Training/Details/SIT50216