

EXPLANATORY MEMORANDUM

RESIDENTIAL PARKS (LONG-STAY TENANTS) BILL 2005

Currently, the *Residential Tenancies Act 1987* regulates, amongst other things, tenancies on caravan parks that are licensed under the *Caravan Parks and Camping Grounds Act 1995*.

The tenancy circumstances of residents of residential parks (caravan parks) are however distinctly different from traditional residential tenancy arrangements, including the existence of rules on many residential parks, the provision of services for which fees may be charged and the fact that in many cases, the dwelling is owned by the resident and only the site is leased.

Residential park developments are particularly attractive to retirees and other groups in society that are looking for a shared community living lifestyle as an alternative to strata developments and retirement village options.

It should also be noted however that the newer style residential parks are in fact caravan parks also accommodating in some circumstances tenants often from vulnerable sections of the community, such as low-income families and the elderly.

The purpose of the Residential Parks (Long-stay Tenants) Bill 2005 (the Bill) is to regulate the relationship between an owner of a residential park and a tenant, where:

- the resident tenant owns a dwelling and leases a site in a park (via a “site-only” agreement) or
- the resident tenant leases both a site and a dwelling in a park (via an “on-site home” agreement).

In particular, the Bill seeks to:

- balance the needs of residential park residents for greater security of tenure while supporting the maintenance of existing, and the development of new, residential parks;
- mirror appropriate provisions of the *Residential Tenancies Act 1987*, but recognise that this form of accommodation is different from the traditional tenancy relationship and provide for those differences;
- include requirements for pre-contractual disclosure, to provide greater contractual certainty;
- require the establishment of a Park Liaison Committee (obligatory where there are 20 or more sites used for long-stay residential purposes) to enable the park’s residents to assist the park operator in the development and changes to park rules and policies; and
- give the parties access to a simple and cost effective dispute resolution process, outside the court system, through the State Administrative Tribunal.

Detailed below is an explanation of the contents of the Bill, on a clause-by-clause basis.

Part 1 Preliminary matters

Clause 1 Short title

States that the short title of the Bill when enacted will be the *Residential Parks (Long-stay Tenants) Act 2005* (the Act).

Clause 2 Commencement

Provides for the Bill to come into operation on a day to be fixed by proclamation in the Government Gazette, but allows provisions of the Bill to come into operation on different days.

Clause 3 Glossary of terms used in this Act

Refers to a Glossary found at the end of the Bill that contains definitions of commonly used terms appearing throughout the Bill.

Clause 4 Crown bound

Provides that the Bill binds the Crown.

Clause 5 Meaning of "long-stay agreement"

Provides that long-stay agreements are those where tenants rent a dwelling and a site or rent a site only on a residential park for three (3) months or more.

The Bill will not apply to situations where an employee or agent of a residential park operator has a right of occupancy on the park as a term of their employment or agency agreement.

The Bill will not apply to holiday makers.

Where people are genuinely on extended holidays of longer than three (3) months the Bill provides for those people to be outside the application of the Bill.

Clause 6 Application of Act to long-stay agreements

Provides that the Bill will only apply to long-stay agreements made after the commencement date.

Provides that the Bill will apply to an existing periodic long-stay agreement as if the agreement had been made immediately after the commencement date.

Where an existing fixed term agreement has been made orally the Bill will apply to the extent that it can until the agreement is terminated or replaced.

Where an existing fixed term agreement has been made in writing the Bill will not apply to that agreement.

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Where an existing fixed term agreement has been made in writing and is extended after the commencement date the Bill will apply to the extent that it can until the agreement is terminated or replaced.

The Bill will apply to long-stay agreements unless otherwise expressly provided for in the Bill and the Bill will also apply notwithstanding any terms included in a long-stay agreement.

Provides that an “existing fixed term long-stay agreement” means a long-stay agreement for a fixed term of three months or longer, which is made before and is continuing at the commencement date.

Provides that an “existing periodic long-stay agreement” means a long-stay agreement that continues for three months or longer, which is made before and is continuing at the commencement date.

Clause 7 Application of Act to periodic long-stay agreements

Provides that a “periodic long-stay agreement” means a long-stay agreement for a periodic tenancy that continues for three (3) months or longer.

At the end of three (3) months after a periodic long-stay agreement which is not in compliance with the Bill was made, the operator must attempt to make an agreement in compliance with this Bill. If such an agreement is not made within five (5) months after the periodic long-stay agreement was made then either party can apply to the State Administrative Tribunal to terminate the lease or for the termination of the terms of the agreement.

Until the agreement is terminated or a new agreement made, the Act applies to the agreement to the extent that it can be applied.

A park operator who does not take appropriate steps to attempt to make a long stay agreement commits an offence.

Clause 8 Operation of this Act in relation to other written laws

Provides that:

- long-stay agreements covered by the Bill will not also be covered by the *Residential Tenancies Act 1987*;
- residential parks that are established for retired persons or predominantly retired persons will be covered by the Bill and not covered by the *Retirement Villages Act 1992*; and
- other than as provided for in the Bill, the Bill will operate concurrently with all other written laws.

Clause 9 Contracting out

Provides that the following terms of a contract or agreement have no effect:

- any term that purports to exclude, modify or restrict the operation of the Bill (except as provided for in clause 32 of the Bill); and
- any other attempt to defeat the operation of this Bill.

The Bill provides that it will be an offence for any person to enter into a contract or agreement intended to evade the operation of the Bill.

Part 2 Long-stay agreement

Clause 10 Form of long-stay agreements

Provides that a long-stay agreement must be in writing and it must include any clauses and matters prescribed as requirements under the Bill.

Clause 11 Information for prospective long-stay tenants

Outlines the types of information that a park operator must give to a prospective long-stay tenant before the parties sign an agreement.

The information is intended to assist a prospective resident to weigh up whether or not to contract with the park operator.

Provides that it is an offence if the park operator fails to comply with this section.

Clause 12 Restrictions on charges payable by long-stay tenants

Provides that a park operator cannot charge a tenant a letting fee or a re-letting fee and can only charge tenants:

- rent;
- a security bond;
- an option fee (as long as this money is refunded or applied to the rent, if the option is exercised);
- any other amount specifically permitted under the Bill; and
- any other prescribed payments.

Provides that a real estate agent acting on behalf of a park operator cannot charge a tenant a letting fee and a real estate agent acting on behalf of a tenant cannot charge a sub-tenant a letting fee.

Provides that a tenant can claim any prohibited fee back from the person to whom it was paid as a debt, through the court of competent jurisdiction.

Contravention of the provisions of this clause will be an offence.

Clause 13 Restriction on letting fees payable to real estate agent

Provides that a real estate agent can charge no more than two weeks rent or a prescribed amount as a letting fee to a park operator or long-stay tenant (when the tenant is assigning a site-only tenancy agreement).

Provides that anyone who pays:

- a letting fee of an incorrect amount; or
- a letting fee to someone other than a real estate agent;

can take action in a court to recover the amount paid.

Contravention of the provisions of this clause will be an offence.

Clause 14 Cost of preparing long-stay agreement

Provides that a park operator must bear the cost of preparing a long-stay agreement unless the agreement expressly states otherwise.

This provision is consistent with the *Residential Tenancies Act 1987*.

Contravention of this provision will be an offence.

Clause 15 Disclosure of park operator's particulars to tenant

Provides that a park operator (or a successive park operator) must give the tenant certain administrative details regarding the current park operator, body corporate and real estate agent in writing. The tenant must receive written details of any change of particulars of the park operator or body corporate within 14 days of the change.

Such details are necessary for the serving of any notices under this Act.

Contravention of the provisions of this clause will be an offence.

Clause 16 Disclosure of tenant's particulars to park operator

Provides that a tenant must provide correct administrative details to the park operator and provide updated particulars within 14 days of the change. Such details are necessary for the serving of any notices under this Act.

At the end of a tenancy, a tenant must provide administrative details about the next intended residence to a park operator, for the purpose of finalising any matters that might arise from the long-stay agreement.

Contravention of the provisions of this clause will be an offence.

Clause 17 Tenant's copy of long-stay agreement

Provides that a park operator must give the tenant a copy of the agreement when the tenant signs a long-stay agreement and an executed copy of the agreement is to be given to the tenant within 21 days of the tenant first signing it, or as soon as practicable after that.

Contravention of this provision will be an offence.

However, if the park operator doesn't sign the agreement, the agreement comes into effect as if the park operator had signed it as soon as the park operator accepts rent from the tenant.

Clause 18 Cooling-off period

Provides that a tenant under a site-only agreement may rescind a contract:

- at any time within 5 working days after the date of the contract; or
- if the relevant disclosure is not made to the resident, at any time before 10 working days from the date the tenant receives the disclosure documents required under clause 11.

Provides that a tenant cannot rescind a long-stay agreement once they have taken up occupation of the site.

The provision is intended to give residents of lifestyle villages, who are often seniors and who may require more time to consider the documents and their lifestyle decision, access to a cooling-off period that is similar to the *Retirement Villages Act 1992*.

The provision does not apply to tenants renting both the site and the dwelling from a park operator. This is consistent with the *Residential Tenancies Act 1987*.

Clause 19 Recovery of amounts paid under mistake of law or fact

Provides that if an amount is paid under a tenancy agreement due to ignorance of the law or through genuine error, the amount is recoverable through reduced rent (if the tenant paid the amount in error) or is recoverable through the State Administrative Tribunal.

Clause 20 Children living on agreed premises

Provides that a person must not refuse to make a long-stay agreement (or advertise or otherwise indicate that a long-stay agreement will not be offered) because it is intended that a child will live on the premises except in the circumstances referred to in Schedule 1 clause 9(1)(a) or (b).

Clause 21 Security bonds

Provides that a park operator can charge a tenant:

- a single security bond of not more than four weeks rent;
- an amount up to \$100 (or as is prescribed) as security for keys or other security devices; and
- a single pet bond (where a cat or dog is allowed to be kept on the premises) of \$100 or a prescribed amount for fumigation of the premises.

Provides that a park operator is also required to give a tenant a receipt for the security bond, with certain administrative particulars.

Contravention of the provisions of this clause will be an offence.

Clause 22 Payment of bond to bond administrator or trust account

Provides that the amount of any security bond paid by a tenant must be deposited:

- with the bond administrator or bond agent; or
- with an authorised deposit-taking financial institution, in the names of both the park operator and tenant; or
- into a tenancy bond trust account, if a real estate agent receives the security bond.

Contravention of the provisions of this clause will be an offence.

Clause 23 Keeping security bond records

Provides that a park operator must:

- keep a true record (with specified particulars) of the security bond paid and lodged; and
- give the tenant a copy of the record within 3 working days of receiving the bond.

Contravention of the provisions of this clause will be an offence and it will be an offence to knowingly make a false entry in a record.

Clause 24 Increase in security bond

Provides that when rent is increased in accordance with the Bill and the agreement, a park operator can give at 60-days written notice of an increase in the security bond payable as long as the bond amount does not exceed four weeks' rent and a pet bond of \$100 or a prescribed amount (if applicable).

The park operator must also issue a receipt, keep appropriate records and appropriately lodge, any increase in the security bond.

Clause 25 Rent in advance

Provides that a park operator can accept no more than two weeks rent in advance from a tenant before or during the first two weeks of the tenancy.

A park operator may also not require any further rent in advance.

This provision is consistent with the *Residential Tenancies Act 1987*.

Contravention of the provisions of this clause will be an offence.

Clause 26 Written receipts for rent

Provides that a park operator must give the tenant a written receipt for rent, providing certain administrative details, within 3 working days of receiving the rent.

This provision does not apply if a park operator nominates an authorised deposit-taking financial institution into which the rent is to be paid.

Contravention of the provisions of this clause will be an offence.

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Clause 27 Requiring post-dated cheques prohibited

Provides that a person cannot require the payment of rent through any post-dated negotiable instrument, such as a cheque.

Contravention of the provisions of this clause will be an offence.

Clause 28 Rent records kept by park operator

Provides that a park operator must keep a true record of the rent paid in relation to a tenancy.

Contravention of the provisions of this clause will be an offence.

Clause 29 Apportionment of rent

Provides that rent accrues daily and is to be apportioned and payable immediately once the agreement ends.

Clause 30 Variation of rent under on-site home agreement

This clause covers tenancies where a tenant rents the site and dwelling from the operator. In this situation a park operator can vary the rent by providing at least 60 days notice to the tenant provided the notice is given at least 6 months after the start of the tenancy and no less than 6 monthly intervals thereafter.

Where the site and dwelling are rented for a fixed term, any rent increase can only apply after the end of the fixed term, unless the agreement allows for a rent increase during the term of the agreement. It should be noted, however, that under clause 3 of Schedule 1 of the Bill tenants are able to seek to include in an on-site home agreement provision to exclude or limit the park operator's right to increase rent under clause 30.

If the park operator has a set review date schedule for long-stay tenants, and the long-stay tenant was given written notice of this date before the agreement was made, then the rent review may occur before 6 months after the start of the tenancy.

This clause is consistent with the *Residential Tenancies Act 1987*.

Clause 31 Variation of rent on the basis of current market rent

If the long-stay agreement includes provision for a review of the rent on a market basis, the park operator must have regard to a valuation obtained from a valuer licensed under the *Land Valuers Licensing Act 1978* when calculating the revised rent amount.

Provides for a penalty of \$5 000 for non-compliance.

Clause 32 Terms of long-stay agreements – Schedule 1

Provides that when the parties negotiate an agreement, clauses of Schedule 1 of the Bill can be excluded, modified or restricted, namely:

- vacant possession;
- no legal impediment to occupation of tenanted premises;
- rent variation;
- responsibility for cleanliness;
- responsibility for damage;
- park operator's responsibility for cleanliness and repairs;
- compensation when a tenant sees to repairs;
- tenant's conduct on premises;
- locks;
- park operator's right of entry;
- tenant's right to remove fixtures or alter premises;
- rates, taxes and charges paid by park operator;
- tenant's right to assign or sub-let the premises; and
- tenant's vicarious responsibility for breach of agreement.

This section is consistent with the *Residential Tenancies Act 1987*.

Part 3 Termination of long-stay agreements

Clause 33 How long-stay agreements are terminated

Outlines the ways that a tenancy agreement can be ended, namely:

- when a notice of termination has been sent in accordance with the Bill, the period of notice has ended and the tenant moves out of the rented premises;
- when a tenancy is the subject of a fixed term agreement, the fixed term ends and the tenant moves out of the rented premises;
- when a park operator successfully applies for an order under Part 5 of the Bill;
- when a person with superior title becomes entitled to possession of the rented premises;
- when the rented premises are taken over by a mortgagee;
- when the rented premises are abandoned by a tenant;
- by mutual consent between the parties; or
- by merger (that is, when a company owns a residential park and is taken over by another company, that seeks to use the park for a purpose other than the provision of residential tenancies).

Clause 34 Terms of continued long-stay agreement

Provides that when the duration of a fixed term agreement passes, but the tenant is allowed to remain on the rented premises, the agreement continues in accordance with the terms of the previous agreement (or any terms ordered by the State Administrative Tribunal).

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Clause 35 Withholding rent in anticipation of release of security bond

Provides that a tenant cannot fail or refuse to pay rent with the intention that the park operator recovers the rent from the security bond.

Contravention of the provisions of this clause will be an offence.

Clause 36 Failure to give vacant possession at end of fixed term

Provides that it is not a breach of a fixed term agreement if a tenant does not move out of rented premises on the specified end date.

Clause 37 Form of default notice

Outlines the requirements of a default notice, namely:

- the notice is to be in writing, signed by a park operator;
- it must identify the rented premises; and
- it must include any prescribed information.

Clause 38 Form of notice of termination

Outlines the requirements of a termination notice, namely:

- the notice is to be in writing, signed by the party giving the notice;
- it must identify the rented premises; and
- it must provide any prescribed information.

Clause 39 Termination by park operator for non-payment of rent

Provides two options for a park operator to address the non-payment of rent by ending a tenancy.

A park operator can give a tenant a notice of termination specifying a termination date at least seven (7) days after the notice. The notice of termination must set out the amount of rent owing and specify a day on which the tenant must give up vacant possession unless the rent is paid on full by that date. The notice of termination must be in the form set out in clause 38.

Alternatively, the park operator may give the tenant a default notice specifying a day at least 14 days after the notice by which the rent must be paid in full and then, if the rent is not paid in full, a termination notice. The date of termination must be at least 7 days after the date specified in the default notice upon which payment of the rent was required. The default notice must set out the amount of rent owing and specify the day by which the rent must be paid, that is the date on which a termination notice may be issued. The default notice must be in the form set out in clause 37.

If a tenant does not give up vacant possession as required under a termination notice the park operator may apply to the State Administrative Tribunal under clause 66.

Clause 40 Termination by park operator for other breaches

Provides that when a tenant breaches an agreement (other than by not paying rent), a park operator can:

- give a tenant a default notice (with specified particulars) that states that the tenant has (at least) 14 days to remedy the breach; and
- if the breach is still not remedied, give the tenant a notice of termination (with specified particulars), giving the tenant (at least) seven (7) days to vacate the rented premises.

The default notice must be in the form set out in clause 37 and any termination notice must be in the form set out in clause 38..

Provides that a tenant must comply with a notice of termination and move out of the rented premises, even if the day specified on the notice is earlier than any previously agreed termination day.

Clause 41 Termination if vacant possession required on sale of park

Provides that a park operator can terminate an agreement by giving to a tenant a notice of termination (with specified particulars) if the park is genuinely being sold and the contract of sale requires vacant possession.

The period of a notice of termination under this section must be:

- not less than 30 days, if a tenant rents a dwelling and a site (as is consistent with the current provisions of the *Residential Tenancies Act 1987*); or
- not less than 60 days, if a tenant rents a site only.

The termination date specified in the notice may be earlier than the date on which a fixed term or periodic tenancy agreement would otherwise terminate.

The termination notice must be in the form set out in clause 38.

It will be an offence for a park operator to knowingly give a notice falsely claiming grounds to terminate a tenancy under this clause.

Clause 42 Termination by park operator without grounds

Provides that a park operator can terminate an agreement without reason by giving a tenant a notice of termination (with specified particulars).

The period of a notice of termination under this clause is:

- not less than 60 days, if a tenant rents a dwelling and a site (as is consistent with the current provisions of the *Residential Tenancies Act 1987*); or
- not less than 120 days, if a tenant rents a site only.

Notice may be given to a tenant with a fixed term agreement but the date of termination must not be any earlier than the end of the fixed term. The specified date may, however, be earlier than the last day of a periodic tenancy.

Provides that a notice given under this section may not be valid if a park operator is the subject of, or has been given, an order to reduce the rent by the State Administrative Tribunal under clause 63.

The termination notice must be in the form set out in clause 38.

Clause 43 Notice not waived by acceptance of rent

Provides that a breach or termination notice is still effective (except if the breach is for non-payment of rent) even though the park operator continues to accept rent from the tenant under the agreement.

Clause 44 Termination of agreement by tenant without grounds

Provides that a tenant can terminate an agreement without reason by giving a park operator a notice of termination (with specified particulars).

The period of a notice of termination under this clause is not less than 21 days, regardless of whether a site or a site and dwelling is rented. However, if the long-stay agreement is for a fixed term the day of termination must be not be any earlier than the end of the fixed term.

The termination notice must be in the form set out in clause 38.

Clause 45 Termination if agreement frustrated

Provides that either party can give a notice of termination (with specified particulars) to the other, and rent will cease as appropriate, if the rented or shared premises:

- become uninhabitable or unusable, otherwise than as a result of a breach of the agreement;
- cease to be lawfully usable as a residential park; or
- are taken over by an authority under a written law.

The period of a notice of termination under this section is:

- not less than 7 days if the notice is given by a park operator to a tenant; and
- not less than 2 days if the notice is given by a tenant to a park operator.

Provides that the tenancy ends on the date specified in the notice of termination even if this date is prior to the expiry of any fixed term or agreed end date.

The termination notice must be in the form set out in clause 38.

Clause 46 When long-stay tenant is entitled to compensation

Provides that a tenant under a long-stay agreement for a fixed term is entitled to compensation for losses incurred as a result of the termination of the agreement when the residential park is sold (clause 41); when the park operator gives no grounds (clause 42); when the agreement is frustrated (clause 45) or when the State Administrative Tribunal has ordered the termination on the grounds of hardship for the park operator (clause 73).

Provides that the amount of compensation payable is either that agreed between the parties or, where they cannot agree, then the amount determined by the State Administrative Tribunal on an application made under clause 65.

Clause 47 When is a park operator entitled to compensation

Provides that a park operator is entitled to compensation for any losses incurred by reason of the tenant abandoning the site.

Clause 48 Disposing of goods abandoned by tenant

Provides that abandoned goods are goods belonging to a tenant that are left on rented premises for two (2) or more days after the end of the agreement.

Provides that a park operator can remove/destroy abandoned goods if the goods are perishable foods or the cost of removing, storing and selling the goods is more than the estimated value of the goods. In other cases the park operator must store the goods appropriately in a safe place for at least 60 days.

Within 7 days of storing the abandoned goods, the park operator must attempt to notify the tenant by post and advertise in a newspaper circulating throughout Western Australia. The park operator may sell the goods at public auction if they are not reclaimed within 60 days of going into storage.

Clause 49 Tenant's right to reclaim abandoned goods put into storage

Provides that an owner of stored abandoned goods can reclaim the goods at any time before the goods are sold by paying the park operator the reasonable costs of storage.

Clause 50 Title acquired by purchaser of abandoned goods

Provides that a person who buys abandoned goods, and has no actual notice that the goods belong to somebody other than the tenant who abandoned them, is entitled to ownership of the goods.

Clause 51 Park operator's liability for abandoned goods

Provides that if a park operator obtains an indemnity certificate from the Commissioner and destroys or disposes of the abandoned goods, but the value of the goods is found to be more than the cost of storage, the Rental Accommodation Fund can be used to pay out the park operator's liability.

Clause 52 Disposition of proceeds of sale of abandoned goods

Provides that if abandoned goods are sold in accordance with clause 48, the park operator is entitled to keep from the proceeds of sale the reasonable costs of removing, storing and selling the goods and any outstanding amounts under the agreement.

Clause 53 Duty of mitigation following breach of agreement

Provides that when a party to a tenancy agreement suffers loss due to a breach by another party to the agreement, the party suffering loss must make reasonable attempts to minimise such losses.

The inclusion of this provision is consistent with the *Residential Tenancies Act 1987* and is not intended to effect the operation of other legal principles.

Clause 54 No recovery of vacant possession during tenancy period

Provides that while a tenant remains on rented premises during a tenancy agreement no one can enter the rented premises to recover possession except in accordance with an order from the State Administrative Tribunal.

Failure to comply with the provisions of this clause is an offence.

Part 4 Other matters related to residential parks

Clause 55 Long-stay tenant's right to sell relocatable home on site

Provides that when a tenant rents a site only, and wishes to sell an on-site dwelling and assign the on-site lease, the tenant must first inform the park operator but is entitled to:

- sell the home on the site; and
- advertise the home by displaying a "for sale" sign,

unless the agreement states otherwise.

If the tenant is permitted under an agreement to assign their rights as a site tenant, they must also tell the park operator if they intend to assign those rights to the purchaser.

Clause 56 Park operator's obligations

Provides that when a tenant informs a park operator of an intention to sell a dwelling on-site, a park operator cannot unreasonably restrict potential buyers from inspecting the relocatable home and shared premises (where relevant).

Failure to comply with the provisions of this clause is an offence.

Clause 57 When park operator acts as agent in sale on site

Provides that if a park operator intends to sell a tenant's relocatable dwelling as an agent for the tenant:

- a written selling agreement, including any commissions to be charged, is required;
- a reasonable commission can be charged; and
- commission is only payable to the park operator if a sale occurs as a result of the operator's efforts.

Clause 58 Park operator's authority to act as selling agent

Provides that a park operator is not required to be licensed as either a real estate agent or a motor vehicle dealer when selling a relocatable dwelling on a residential park, but must set up a trust account, in the names of the tenant and park operator and deposit any sale proceeds (less any expenses or commission). The use of the trust account will be subject to the same provisions as apply to the use of real estate agents' trust accounts under sub-sections 68 (2) to (6) inclusive of the *Real Estate and Business Agents Act 1978*.

Clause 59 Establishment of park liaison committee

Provides that where a park has 20 or more long stay sites, the park operator must convene and maintain a park liaison committee to the best of the park operator's ability otherwise the park operator commits an offence.

Clause 60 Constitution of park liaison committee

Provides the membership of the park liaison committee is to consist of at least one tenant representative and one park management representative, but in the interests of negotiating fairness, there must be more tenant representatives than park management representatives on the committee.

Provides that the Commissioner for Fair Trading can make and publish guidelines about the membership and procedures of park liaison committees.

Clause 61 Functions of a park liaison committee

Outlines the objective of a park liaison committee in terms of improving the lifestyle and well-being of tenants who use the park as their principal place of residence.

Outlines the functions of a park liaison committee, specifically:

- to assist the park operator to develop, amend or enforce park rules and guidelines for behaviour;
- to assist in the resolution of disputes;
- to develop policies for improving the environment and amenities of the park; and
- other prescribed matters.

Part 5 State Administrative Tribunal powers

Clause 62 Breaches of agreement and other disputes

Provides that a party or prospective party to a long-stay tenancy agreement or a selling agency agreement (see clause 57), can apply to the State Administrative Tribunal if a breach, or dispute, in relation to the agreement has occurred.

Provides that in all matters, the Tribunal can give directions and make a wide range of orders that are appropriate in the circumstances of the case.

Clause 63 Orders for reduction of rent

Outlines the circumstances in which a tenant can apply to the State Administrative Tribunal for an order to reduce the rent payable under a tenancy agreement, namely when the tenant can prove in the circumstances that:

- there has been a reduction in the size or quality of the rented premises or shared premises, through no fault of the tenant; or
- the park operator has set the rent with some intent to encourage the tenant to leave and end the tenancy.

Provides that the tenant is entitled to make application to the Tribunal even if the tenant has agreed to pay the disputed amount of rent.

In considering the tenant's application, the Tribunal can take into account matters such as the rent payable at comparable premises, the value and condition of the rented premises, outgoings, services, chattels and facilities available.

Clause 64 Orders when premises abandoned by tenant

Provides that a park operator can apply to the State Administrative Tribunal for a declaration that the rented premises have been abandoned and that the Tribunal can make the order when there are reasonable grounds to suggest that the tenant has abandoned the rented premises.

Provides that when a declaration is made, the Tribunal must specify the date of abandonment and any compensation payable to the park operator under clause 47.

Clause 65 Determination of compensation payable to long-stay tenant

Provides that a tenant or park operator may apply to the State Administrative Tribunal for determination of the amount of compensation payable to a tenant under clause 46 when the parties have been unable to agree on an amount.

When reaching a determination, in relation to a tenant on a site only agreement the Tribunal is to have regard to the matters set out in clause 65(2). These matters include the cost of removing, towing, erecting and re-establishing the relocatable home.

When reaching a determination, in relation to a tenant on an on-site agreement the Tribunal is to have regard to the matters set out in clause 65(3). These matters include the cost of travelling and transporting the tenant's possessions.

Clause 66 Orders for vacant possession if rent not paid

Provides that a park operator can apply to the State Administrative Tribunal for an order to end the tenancy agreement and for vacant possession of the rented premises when:

- a termination notice for non-payment of rent has correctly been given to a tenant in accordance with clause 39;
- the rent has not been paid in full; and
- the tenant has not moved out of the rented premises.

Provides for the Tribunal to specify the day from which the order takes effect.

Clause 67 Orders for vacant possession at end of fixed term

Provides that a park operator can apply to the State Administrative Tribunal for an order to end the tenancy agreement and for vacant possession of the rented premises when:

- a fixed term tenancy agreement has ended;
- there is no agreement for the tenancy to continue; and
- the tenant has not moved out.

Provides that the Tribunal can grant the orders or may suspend the operation of the order for a period of up to 30 days, after considering the relative hardship to the park operator and tenant of such a suspension of orders.

Clause 68 Orders for vacant possession on other grounds

Provides that a park operator can apply to the State Administrative Tribunal for an order to end a tenancy agreement and for vacant possession of the rented premises when:

- a termination notice (other than for non-payment of rent) has been given to a tenant or a park operator; and
- the tenant has not moved out.

Provides that the Tribunal can grant an order under this clause (and indicate the day from which the order is to take effect) if the procedures relating to issuing the termination notice were followed and if the grounds of the notice were made out and were sufficiently serious to justify ending the agreement.

Provides that when the tenant has complained to a public authority about the park operator in relation to the agreement, or had taken steps to enforce their rights as a tenant under the agreement, the onus is on the park operator to prove that they were not motivated by the tenant's actions when issuing the notice of termination to the tenant.

Clause 69 Orders for compensation to park operator for holding over

Provides that a park operator may apply to the State Administrative Tribunal for compensation for any loss as a result of the tenant's failure to comply with an order by the State Administrative Tribunal to vacate the premises.

Clause 70 Tenant's protection against holder of superior title

Provides that, when an application has been made by a person with superior title for recovery of the rented premises, that:

- the State Administrative Tribunal, before making any order, must consider the circumstances of the tenant's possession of the rented premises and if the tenant had notice of the application; and
- the tenant can apply to the Tribunal for possession of the agreed premises and the Tribunal can make such an order, with discretion to make any terms of such possession.

Clause 71 Orders to terminate agreement if tenant is causing damage or injury

Provides that a park operator can apply to the State Administrative Tribunal for an order to end the tenancy agreement and for vacant possession of the rented premises when:

- the tenant has intentionally or recklessly caused or permitted damage to the park premises;
- the tenant is likely to intentionally or recklessly cause or permit damage to the park premises;
- the tenant has intentionally caused or permitted injury to the park operator, an agent of the owner or anyone else lawfully on the park premises; or
- the tenant is likely to cause or permit injury to the park operator, an agent of the owner or anyone else lawfully on the park premises.

Provides that if the Tribunal is satisfied the grounds are made out, the order takes effect immediately.

Clause 72 Orders to terminate agreement for breach by park operator

Provides that a tenant can apply to the State Administrative Tribunal for an order to end the tenancy agreement and the Tribunal can grant the order when:

- it is proven that a park operator has breached a term of the agreement; and
- the breach is sufficient to justify ending the agreement.

Provides that the Tribunal must specify the day that the tenant will move out.

Clause 73 Termination on grounds of hardship to park operator

Provides that a park operator may apply to the State Administrative Tribunal for an order terminating a tenancy agreement where the Tribunal is satisfied that the park operator would suffer undue hardship if required to terminate the agreement under any other provision of the Bill.

Clause 74 Tribunal's power during fair rent proceedings

Provides that when a tenant has successfully achieved, or is in the process of seeking, a fair rent order under clause 63, a park operator can apply to the State Administrative Tribunal for an order to allow the park operator to give the tenant a termination notice on no grounds if the Tribunal is satisfied that the park operator is not in any way motivated by the tenant's pursuit, or achievement, of a fair rent order to end the tenancy.

Clause 75 Disposing of proceeds of sale of abandoned goods

Provides that, when the proceeds of the sale are greater than the costs of removing, storing and selling abandoned goods, the park operator can apply to the State Administrative Tribunal to determine the amount payable by the park operator to the Tribunal.

The park operator can discharge his or her liability by paying the amount determined by the Tribunal to the Tribunal. The Tribunal is required to pay any amounts received under this clause to the Rental Accommodation Fund.

Clause 76 Park operator's claim if sale proceeds insufficient

Provides that, when the proceeds of the sale of abandoned goods are insufficient to meet the costs of removing, storing and selling abandoned goods, the park operator can apply to the State Administrative Tribunal for reimbursement of costs from the Rental Accommodation Fund.

Clause 77 Recovery by owner of value of goods sold

Provides that if the proceeds of sale of abandoned goods are paid into the Rental Accommodation Fund, the person who owned the goods before the sale can apply to the State Administrative Tribunal for the amount paid into the Fund from the sale to be recovered from the Fund.

Clause 78 Meaning of "original party" in this Division

Provides a definition of "original party" for the purposes of this Division 5 of the Bill.

Clause 79 Proceedings instituted or defended by Commissioner

Provides that the Commissioner for Fair Trading may take part in proceedings under the Bill to enforce or protect the rights of a party to a long-stay tenancy agreement when:

- the Commissioner is satisfied there is a cause of action and it is in the public interest to take part;
- the written consent of the original party and of the Minister has been obtained; and
- if the tenancy agreement has expired, the original party made a complaint to the Commissioner within 3 months of the agreement expiring.

The Commissioner may institute, defend or assume conduct of proceedings for the purposes of the above.

Once the original party has consented to the Commissioner taking action, that consent cannot be withdrawn without the agreement of the Commissioner.

The Minister can impose conditions on his or her consent to the Commissioner taking part in the proceedings.

Clause 80 Evidence in proceedings undertaken by Commissioner

Provides that, for the purposes of the Commissioner being able to take action under clause 79, statements that the Commissioner is satisfied there is a cause of action and that it is in the public interest to act, and that the original party and Minister have consented to the Commissioner acting, are proof of those matters in the absence of evidence to the contrary.

Clause 81 Conduct of legal proceedings by Commissioner

Provides that, when taking action under clause 79, the Commissioner has all the rights in relation to the action that the original party would have had. When taking action the Commissioner may act as he or she sees fit and need not consult with or obtain the consent of the original party.

When the Commissioner assumes the conduct of proceedings already before the State Administrative Tribunal, the Tribunal is required to substitute the original party with the Commissioner as a party to the proceedings. Where the original party has another cause of action, the Tribunal must order that the proceedings involving the Commissioner and the proceedings for the other cause of action be heard separately.

Clause 82 Orders exempting persons from the operation of this Act

Provides that a park operator or tenant can apply to the State Administrative Tribunal for an order that a provision of the Bill:

- not apply to an agreement, proposed agreement, premises or part of a premises; or
- applies in a modified manner to an agreement, proposed agreement, premises or part of premises.

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Clause 83 Payment of costs and other amounts

Provides that when the Commissioner takes action on behalf of a party to a long-stay tenancy agreement, any monies recovered must be paid to the original party and that any amounts awarded against the original party must be paid by the original party, not by the Commissioner.

Costs of the proceedings must be borne by the Commissioner and the Commissioner may retain any award of costs.

Part 6 Other matters

Clause 84 The Commissioner

Provides for the Minister to designate a person as a Commissioner for the purposes of this Bill.

It is proposed that the Commissioner will be the Commissioner for Fair Trading.

Clause 85 The Commissioner's functions

Outlines the functions of the Commissioner in administering the Bill, namely:

- researching the interests of parties to residential agreements;
- publishing and distributing reports regarding the interests of parties to residential agreements;
- advising people about the law;
- investigating complaints and taking necessary action, namely prosecution or negotiation, in relation to offences or civil matters; and
- making reports to the Minister about any matter referred for, or arising from, the Department's investigations.

Clause 86 Delegation by Commissioner

Provides for the Commissioner to delegate the functions of this office under the Bill to the holder of an office or officer of the Department, except the power to delegate.

Clause 87 Information officially obtained to be confidential

Provides that it is an offence for a person to misuse information obtained in the course of administering this Bill.

Clause 88 Protection from liability for wrongdoing

Provides that, in carrying out the functions under the Bill, the State, the Commissioner, a delegate of the Commissioner or an officer of the Department is not liable for any act or omission done in good faith.

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Clause 89 Judicial notice

Provides that persons acting in a judicial capacity must note the signature of the Commissioner and any person that has held such office.

Clause 90 Time for commencement of offence proceedings

Provides a limit of 2 years from the alleged commission of an offence for proceedings to be commenced.

Clause 91 Service of documents

Provides that documents mentioned in the Bill can be:

- given to the recipient in person or by post to the last known address of employment or residence;
- by a park operator to a tenant by giving the notice to a person who seems to live on the rented premises and appears to be 17 years or older or by giving the notice to the person who usually pays the rent;
- copied and published in a newspaper circulating in Western Australia (where it is not practicable to give the document to a person personally, and their address is unknown; or
- given to one park operator or tenant, on behalf of a group of park operators or tenants.

Such provisions are consistent with the *Residential Tenancies Act 1987*.

Clause 92 Terms on which ADI holds tenancy bond amounts

Provides the terms under which an authorised deposit taking financial institution holds a tenancy bond account in relation to:

- payment of a prescribed rate of interest on the account, which is to accrue to the Rental Accommodation Fund ;
- any interest payments on bond accounts that are higher than the prescribed rate to accrue to the tenant; and
- deduction of prescribed fees.

Clause 93 Information from ADI about tenancy bond accounts

Provides that the Commissioner can obtain information about security bond accounts from a manager of an authorised financial institution by a notice (with specified particulars) in writing, giving reasonable notice to comply and explaining that the information is required to be given. The manager must provide true information, even if such information is incriminating (although it cannot be used as evidence in the State Administrative Tribunal).

Failure to comply without reasonable excuse to a requirement of the Commissioner under this clause is an offence, as is the provision of information that a person knows is false or misleading in a material particular.

Clause 94 Responsibilities of bond administrator

Provides that the bond administrator must pay security bonds lodged with the administrator into the Rental Accommodation Fund; keep proper records about the details of security bonds lodged; and pay out the security bonds in accordance with the regulations.

Clause 95 Regulations

Provides that regulations can be made by the Governor in relation to prescribed matters or for providing more detail about a provision in the Bill, including:

- details of a property condition report;
- fees that may be charged to tenants;
- information required to be given to a tenant at the time of entering into a tenancy agreement;
- details relating to security bonds; and
- details relating to park rules.

The regulations may include a penalty of a fine of not more than \$5,000 for breach of matters set out in the regulations.

Clause 96 Review of the Act

Provides that a review of the operation of the Bill when enacted is required as soon as possible after 5 years of the Act coming into operation, and requires the preparation and tabling of a report in each House of Parliament.

Clause 97 Transitional provisions

Provides that:

- fixed term agreements (or an option to make, renew, extend or assign an agreement) in place before the Bill is enacted:
 - if in writing, will continue upon the original terms (despite the Act); and
 - if made orally, will be subject to the Bill upon this Bill coming into operation;
- periodic agreements, made before the Bill commences, and if not terminated within three (3) months of commencement of the Bill, must be converted to written agreements or if the tenant refuses, have the terms of a new agreement determined by the State Administrative Tribunal;
- it is an offence if park operators do not attempt to convert periodic agreements to written agreements;
- proceedings started before the commencement of this Act (including the issuing of a termination notice and any process to increase rent) are not subject to the Bill; and
- a matter arising before the commencement of this Act may be the subject of proceedings under this Act (if not already subject to proceedings under the *Residential Tenancies Act 1987*);

Clause 98 Consequential amendments

Provides for a series of consequential amendments in Schedule 2 of the Bill to the *Rates and Charges (Rebates and Deferments) Act 1992* and the *Residential Tenancies Act 1987* for the purposes of the proper operation of this Bill.

Schedule 1 - Terms of long-stay agreements

1 Vacant possession

Provides that the premises will be ready for the long-stay tenant to move into (in the case of an on-site home agreement) or onto (in the case of a site-only agreement), in accordance with the agreement.

2 No legal impediment to occupation of tenanted premises

Provides that a park operator must not rent out any premises if there are any matters that a park operator should know about that would legally prevent a tenant from moving into a dwelling and/or onto a site.

3 Provision for rent variation – on-site home agreements

Provides that in relation to the renting of a site and a dwelling, a tenancy agreement may exclude or limit the park operator's right to increase rent.

4 Provision for rent variation – site-only agreements

Provides that an agreement, for the renting of a site only, may provide for rent to be reviewed in accordance with the agreement but only if the agreement:

- provides for rent reviews that are carried out no more frequently than yearly;
- contains a single basis for calculating the rent payable at each review date (but may specify a different basis to calculate the rent at different review dates); and
- does not contain a term that prevents the rent from being reduced after applying the specified basis for varying the rent at a review date (that is, it prevents the operation of a “ratchet” clause).

5 Responsibility for cleanliness

Provides that when a site only is rented a tenant must keep the site and the exterior of his/her dwelling in a reasonable state of cleanliness.

When both a site and a dwelling are rented, a tenant must keep the site, the interior and exterior of the dwelling in a reasonable state of cleanliness.

6 Responsibility for damage

Provides that all tenants must not intentionally or negligently cause or permit damage to any rented premises or shared premises and must notify the park operator about any damage to rented premises as soon as possible (but within 3 days of the damage occurring).

This clause is consistent with the *Residential Tenancies Act 1987*.

7 Park operator’s responsibility for cleanliness and repairs

Provides that a park operator must provide and maintain any rented premises and any shared premises:

- in a reasonable state of cleanliness;
- in a reasonable state of repair; and
- in compliance with any other written laws in relation to health and safety.

8 Compensation where tenant sees to repairs

Provides that a park operator must compensate a tenant who undertakes urgent repairs to rented premises (even if the tenant knew about the state of the premises when the agreement was signed) if:

- the repair was required to prevent injury, damage or inconvenience to the tenant;
- the tenant made a reasonable effort to notify the park operator about the problem and about the tenant’s intention to pay for the repairs; and
- a suitably qualified person undertakes the repair and provides a report about what caused the disrepair.

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9 Permitting children to live on agreed premises

Provides that it will be an offence for a park operator, or anyone acting for the park operator, to refuse to make (or to advertise or otherwise indicate that they will refuse to make) a long-stay agreement with someone because they intend to share the premises with children.

10 Tenant's conduct on premises

Provides that tenants must not use any rented premises or shared premises for illegal purposes and must not cause or permit a nuisance to occur on the park.

11 Quiet enjoyment

Provides that the park operator, or any person with superior title to that of the park operator, must allow the tenant to use the rented premises in reasonable peace and without interruption and the park operator must take reasonable steps to ensure that the tenant can live on the premises in reasonable peace and without interruption by other tenants of the park.

12 Locks

Provides that where a tenant rents a dwelling, the park operator is responsible for providing and maintaining locks that will keep the rented premises reasonably secure. Before changing the locks to shared premises, a park operator must notify tenants and provide access to the tenants.

In addition, tenants of a residential park and the park operator, must not alter, remove or add any lock to rented or shared premises and the park operator cannot alter, remove or add any lock to a privately owned dwelling without the consent of the other party.

Provides that if an agent of the park operator, without reasonable excuse, changes a lock to the agreed premises or shared premises without the consent of the tenant then the agent commits an offence.

Contravention of the provisions of this clause will be an offence in addition to any civil liability.

13 Park operator's right of entry

Provides that for all tenancies, including a tenancy where a site only is rented, a park operator can enter a site or a dwelling:

- with the permission of a tenant; or
- in an emergency.

Depending on whether a site only is rented, or a site and dwelling, are rented, a park operator may enter the rented premises:

- after giving a tenant at least 24 hours written notice, for the purpose of fulfilling the obligations of this Act or inspecting repairs and maintenance;
- after giving a tenant at least seven (7) and no more than 14 days notice, to inspect or for other purposes,
- at any reasonable time (but not more than once a week), in order to collect the rent,
- at any reasonable time (but not more than once every four weeks), in order to both collect the rent and inspect the premises;
- after giving a tenant 72 hours notice, in order to carry out or inspect necessary repairs or maintenance;
- after giving a tenant reasonable notice, in order to show prospective tenants around during the last 21 days before the tenancy ends; and
- after giving a tenant reasonable notice, in order to show prospective purchasers around.

14 Tenant's right to remove fixtures or alter premises

Provides that, depending on whether a site only is rented or a site and dwelling are rented, a tenant must not put anything up, renovate, alter or add to the rented premises without the owner's consent (which cannot be withheld unreasonably).

If a tenant owns a dwelling, the tenant must not attach to, renovate, alter or add to the exterior of the dwelling without the owner's consent (which cannot be withheld unreasonably). Where such consent is given, a tenant can remove the fixture at any time unless it would cause irreparable damage.

If a tenant causes damage to the rented premises by removing a fixture, the tenant must notify and reimburse the park operator for any reasonable expenses.

15 Rates, taxes and charges paid by park operator

Provides that a park operator must pay rates, taxes and charges, including charges for water services (but not water consumption), in relation to the rented premises.

This clause is consistent with the *Residential Tenancies Act 1987*.

16 Provision for sub-letting the agreed premises

Provides that tenancy agreements may include a term that allows, disallows, or gives the park operator discretion to determine if a tenant may sub-let or assign the tenancy. The park operator cannot charge for such approval, except for incidental expenses.

Where the agreement is silent on this matter, then the park operator will have the discretion to allow sub-letting or assignment. Whenever the park operator has the discretion to approve sub-letting or assignment the park operator cannot unreasonably withhold consent.

However, this section is subject to any other written law, which may prohibit or regulate sub-letting.

17 Tenant's vicarious responsibility for breach of agreement

Provides that a tenant is responsible in law for any act or omission by any person who is allowed onto the property by the tenant that would breach the agreement, as if the tenant had committed that act or omission.

18 Accelerated rent and liquidated damages prohibited

Provides that a term of an agreement has no effect if it states that when a tenant breaches the agreement, the Bill or another written law, the tenant must pay:

- all or part of the remaining rent under the agreement;
- an increased rent; or
- any penalty or liquidated damages.

If the agreement provides for a reduction in rent, rebate, refund or other benefit where a tenant does not breach the agreement, the Bill or another written law, the tenant gets the benefit at the commencement of the tenancy in any event.

This provision is consistent with the *Residential Tenancies Act 1987*.

Schedule 2 - Consequential amendments

1 Rates and Charges (Rebates and Deferments) Act 1992 amended

Amends the *Rates and Charges (Rebates and Deferments) Act 1992* section 29C Relevant interest with respect to an owner-occupier of a relocatable home for the proper operation of this Bill.

2 Residential Tenancies Act 1987 amended

Amends certain sections of the *Residential Tenancies Act 1987* for the proper operation of this Bill.

Defines terms used throughout the Bill.

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