

[www.parkhomeownerswa.com.au](http://www.parkhomeownerswa.com.au)

[Facebook](#) @ParkHomeOwnersWA

[e: phoawa@gmail.com](mailto:phoawa@gmail.com)



Box 1648

Wangara WA 6947

A1007306D

**SUBMISSION to Legislative Standing Committee**

**Re: RP(LST) Act Amendments 2018**

***From Park Home Owners Assn WA Inc***

***February 2019***

The Hon Dr Sally Talbot MLC  
Chair, Legislative Standing Committee

Thank you for the opportunity to put forward our views on behalf of Park Home Owners WA and for giving us this opportunity.

Recently we thanked The Hon. Bill Johnston for his work on the Amendments and his concern about the issues faced by homeowners in parks and villages. He responded: "I will continue to work to ensure park home residents have access to proper protections. I appreciate you taking the time to write to me on this issue and for your continued advocacy on behalf of residents." We acknowledge that at all times his government afforded respect to park home owners and were ready to listen.

Our organisation was incorporated in 1998 and we have endeavoured to work constructively to address the vulnerability of park home owners in a way which is simultaneously fair to Park Operators. Our membership has at peak exceeded 1000; is now around 600, and we have persevered through 20 years of ups and downs. Our Board has been comprised of many volunteers over the years, most from professional backgrounds, who have worked tirelessly to bring "progress through dialogue." Our current committee of six have been together for three years and we all have every intention of continuing in our positions. As President, I am very proud of our performance over this time and believe we have established ourselves as a significant presence in the industry. I believe that it is our persistence that has brought about the current review. The staff at the

Department of Commerce, led by Amanda Blackwell, have been receptive to our ideas and very professional in their construction of the Bill.

We aim to more fairly balance the power between homeowners in parks and the Park Operators. Due to the fact that this industry (Residential Villages and Parks) was for so long unregulated, we believe that discrepancies still remain.

Generally speaking we see the Amendment Bill (Bill 99) as very good. We are grateful that so much effort has been made to improve it. We support its passage through the Council.

We are concerned that there are inconsistencies in what we are being told will happen and what is actually written in the Bill.

Our *Appendix A* details these inconsistencies for your scrutiny.

*Appendix B* outlines the reasons for our ongoing concerns.

*Appendix C* gives details of clauses and paragraphs quoted.

For clarity we want to state again:

WHAT WE WERE HOPING FOR IN THE AMENDMENT BILL:

1 We hoped Clauses would be retrospective where possible.

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

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

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

3 Relief from unfair rent provisions.

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

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

This is not addressed in the Amendment Bill.

5 Standard terms to apply to all agreements.

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

## **APPENDIX A**

### **What we believe are INCONSISTENCIES in the Amended Act:**

#### **All agreements and residential parks -**

*“A fixed term agreement can no longer be terminated early without tenant’s agreement if operator has entered into a contract of sale of the park with vacant possession. (s41).”*

110. Former s.41 continues to apply to pre-commencement long-stay agreements. **So - new agreements only.**

41D (2) The day specified under subsection (1)(c)

(a) for a site-only agreement — must be at least 180 days after the day on which the notice is given; **ie - Periodic Leases**

**We believe that there remains very little protection, particularly for those on Periodic Leases, in the event of problems incurred by Park Operators – either financial or otherwise - and that homeowners will still be the ones to “pay the price” in the event of early termination for reasons which usually benefit Park Operators.**

*“Park operator cannot interfere with the sale of a home or require the tenant to appoint a particular person as selling agent.”*

113. Former s. 55 continues to apply to pre-commencement long-stay agreements.

If a term of a site-only agreement entered into before commencement day expressly provides that on site sales are prohibited, despite amended section 55, the term continues to apply to the site-only agreement on and from commencement day.

114. Written selling agent agreement under former s.57 continues to apply on and after commencement day.

If a park operator is acting as a selling agent under a written agreement signed under former section 57 before commencement day —

(a) former section 57 continues to apply to the written agreement on and from commencement day; and

(b) section 57A does not apply to the written agreement.

***This effectively means that there will be no change to already made agreements.***

*“ Prohibition on the following types of clauses:*

•*market rent review;*

*106. Variation of rent on the basis of market rent*

(1) This section applies if a pre-commencement long-stay agreement includes a provision providing for a review of rent on a market rent basis.

(2) Despite amended section 29A(1)(c), the provision continues to apply on and from commencement day until the provision is varied by the parties to the long-stay agreement.

***So - this prohibition does not apply to current leases.***

## APPENDIX B

### REASONS for our CONCERNS

#### Retrospectivity

Long stay parks (eg NLV) are mostly fixed term, **periodic leases** being mainly confined to mixed use parks. We acknowledge that these lifestyle villages are beginning to dominate the industry.

However according to the Review, 48% of Parks only issue periodic leases which affects some 27% of residents in the industry. Periodic leases are subject to 180 days' notice. We know of instances where operators have been able to change part of their lease to suit changes to their operations or operating systems. **And with this in mind, we can see no reason why many of the proposals made in the Bill shouldn't be retrospective for these residents.**

#### Selling a Home

Whilst the Bill will allow new residents to sell their own homes, precommencement leases continue to be valid.

We submit that the huge numbers remaining on these old leases will continue to suffer great financial hardship. We see an enormous conflict of interest where operators often are in no hurry to sell homes, since rent continues to be paid. And some Park Operators focus on selling new homes before selling second-hand homes.

Sales prices are the result of supply and demand and it **should be up to the homeowners to balance continuing rent against the house saleable value.** Operators already have control over who enters the park with their issuing of leases.

#### Rents

Whilst agreeing that rent is almost impossible to legislate for, we feel that homeowners **should be given the same new facility as operators to apply to SAT** for relief when their rents get out of sync with the times.

We also make the point that in the suburbs rent costs are based on supply and demand. Suburban renters can move. For many in manufactured homes and certainly in the case of manufactured homes built around caravans in a caravan park, this is not possible. The only alternative is to sell the home and move to State housing, thus putting further burden on government.

The Review recommends that in keeping with the Residential Tenancies Act, rent by market review should cease. But the Amendment Bill allows it to continue if it is a pre-existing condition.

We know from experience that operators are not willing to show how they come to a valuation. Moreover when one operator decides on a suitable rent, other park owners follow suit and make that their benchmark .

### **Compensation**

Whilst we understand that Park Operators are against any form of compensation we would point out that although caravans are a depreciating asset, the modern manufactured home according to the Review has a life of some 60 years and forms a considerable investment for a home owner.

The proliferation of periodic leases means that home owners have no access to any sort of compensation. The Amendment Bill “does not recognise periodic leases.” However, many hundreds of current leaseholders are on periodic leases and will remain so because this is preferred by Park Operators.

We feel that there should be some facility to approach SAT for relief in the cost of moving a home elsewhere, in the happy event that a new site could even be found. This is another example of where better legislative protections for park homeowners would take the strain off public housing.

## APPENDIX C

### DETAILED ANALYSIS of previous comments

#### **References:**

*Decision Regulatory Impact Statement (DRIS)*

*Explanatory Notes to Bill (EN)*

*Bill*

*Circular from DOCs to homeowners (Circ)*

#### **1 RETROSPECTIVITY**

The increased popularity of *lifestyle villages* has overshadowed the fact that in the **majority of parks, residents are on periodic leases** subject to 180 day notice.

43% of parks give only periodic leases and 56% of mixed-use parks that offer fixed term leases are of 12 months or less. Furthermore 38% of all residents within parks are on periodic leases. (DRIS pg 15) Short term leases might give a sense of security but no more than that.

Park operators can & do change their leases to their own requirements which homeowners find hard to dispute. (eg Burns Beach & Fremantle Village)

Leases are therefore **not sacrosanct** and could easily be changed to conform with changes in the Act. Having new leases that comply with the Act and old leases that don't, creates two classes of homeowners, which can cause problems.

#### **Clauses we believe allow the status quo to continue :**

- *New agreements only:* Agreements to be in standard form. (Circular from DOCs)
- That any term of pre-commencement agreement prohibiting on-site sale continues to have effect as does written selling agency agreement. (EN s113 & s114 pg 41).
- *New mortgages only:* No termination on mortgagee possession for mortgages entered into after Commencement.
- It is recommended that in keeping with Residential Tenancies Act, rent by market review should cease (DRIS 14.2 pg 267) but the Bill *allows* it to continue if it is a pre-existing condition. (s106 pg40).
- The process for undertaking a rent review before Commencement is to continue to apply afterwards (Bill s107 EN pg40).
- Agreements can no longer be terminated if mortgagee takes possession of park (Bill s33[iii]). However this *does not apply* to mortgages taken out before commencement day (Bill s109 EN pg 40).



- A fixed term agreement can no longer be terminated early without tenant's agreement if operator has entered in to a contract of sale of the park with vacant possession. (Bill s41 EN pg 21). *Does not apply* to periodic leases (Bill s41 EN pg 21) and *does not apply* where the contract for sale takes place before the Act comes in to force. *Nor does it apply* for pre-commencement agreements (Bill s110 EN pg 40)

## **2 SALE OF HOMES:**

- The Act is amended so that the right of a tenant to sell their home cannot be excluded from their contract (Bill s55 EN pg27). This is in accordance with DRIS recommendations 17.1 & 17.6 (pg 270). This again is *meaningless* since a transitional provision provides that an agreement that prohibits such a method of sale already in an agreement prior to the Act coming in to force continues to have effect. (Bill s113 & s114 EN pg 41)
- The price of a home is subject to market forces and an outgoing homeowner has to balance that against the cost of continuing rent. The park operator already has control over choice of incoming residents. It is *inherently unfair* for the operator to be able to control sale whilst continuing to collect rent until the sale takes place.

## **3 RENT:**

- Nobody wants rent rises so controlled that operators find themselves in financial stress and either have to close down or sell the land for development.
- However, some residents were stuck with agreeing in their leases to a 6% pa rise at a time when it was normal, which in current conditions is extremely unfair. Unlike the suburbs where there is an opportunity to move to take advantage of varying rents the only alleviation for park homeowners is to sell their property.
- DRIS recommendation 14.2 states that market reviews would not be permitted (consistent with changes in the Residential Tenancies Act) and goes to some length to explain why. (pg 143). The *Bill takes no notice of this recommendation* in that Bill s106 EN pg 40 states that this method can continue if it was a provision of an existing lease before the changes to the Act came in to force. Likewise the process for undertaking a rent review before the Act comes in to force is to continue to apply afterwards (Bill s107 EN pg40).

- Under Bill s63A operators have the chance to approach SAT “to increase the amount of rent payable as a result of significant cost increases under 15 section 31”. It has been suggested that Bill s62A(2)b (“a term of a long-stay agreement is harsh or unreasonable or inconsistent with the Act”) is an avenue for home owners to seek relief from an unfair rent increase, even if one is dictated by their lease. Whatever the case, homeowners need the same opportunity to go to SAT where consistent rent increases don’t meet current **conditions**.

#### **4 COMPENSATION:**

- The proliferation of periodic leases is in part caused by the tricky problem of compensation. However, consider that depending on the type of home, homeowners have spent considerable sums on acquiring them. Price of park homes ranges from \$20k-\$270k (DRIS Pg 16) & relocation costs in 2012 were said to be \$14k even if there was somewhere to go. (DRIS Pg 102). (We believe that relocation costs can go as high as \$40K.) Whilst it is true that caravans are a quickly depreciating asset, manufactured homes have a life of 75 years (DRIS pg 207). There should be some option for homeowners to approach SAT for redress, taking in circumstances from both sides of the equation.
- DRIS has lengthy discussion on this subject (pg 111). Industry’s view was that compensation was not due for periodic tenancies. However, if the Bill is doing away with the term “periodic” for “long-stay agreement” then the basis for this argument seems to fall away.

*End of Park Home Owners WA Inc SUBMISSION*

*Kenneth Mann  
President, PHOA WA.*