



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

EXPLANATORY MEMORANDUM

Residential Parks (Long-stay Tenants) Amendment Bill 2018

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RESIDENTIAL PARKS (LONG-STAY TENANTS) AMENDMENT BILL 2018

Overview of the Bill

The *Residential Parks (Long-stay Tenants) Act 2006* (the Act) regulates the tenancy relationship between long-stay tenants and park operators in residential parks. The Act applies to:

- on-site home agreements – where the tenant rents a site and the dwelling in a residential park; and
- site-only agreements – where the tenant rents the site from the park operator, but owns their own dwelling (a relocatable home) which is placed on the site.

The purpose of this Bill is to amend the Act in order to implement the recommendations of a statutory review undertaken in accordance with section 96 of the Act. The recommendations are aimed at improving certainty of contract and fair dealings between the parties.

Key amendments include:

- improved disclosure obligations, including new disclosure obligations in relation to voluntary sharing arrangements;
- no ‘without grounds’ terminations of long-stay agreements – instead a set of specific grounds for termination will be included in the Act;
- no termination of fixed term agreements on the sale of a park and no automatic termination if a park owner’s financier takes possession of the park;
- clearer rules for park operators, home owners and prospective tenants in relation to the sale of homes;
- clearer obligations relating to the creation and enforcement of park rules; and
- standard lease clauses will no longer be able to be varied, with a minimum set of core terms to apply to all long-stay agreements.

In addition:

- the Act is amended for consistency with the *Residential Tenancies Act 1987*, where appropriate, so that tenants are treated equitably irrespective of the nature of premises that they lease;
- the structure of the Act will be changed to improve clarity, by including the standard terms currently set out in Schedule 1 in the body of the Act;
- specific links and references to the *Caravan Parks and Camping Grounds Act 1995* (CPCG Act) are removed from the Act as far as is possible to avoid potential anomalies arising out of any changes to the CPCG Act; and
- minor amendments are made to the Act where necessary in order to improve clarity.

Clause 1 Short title

The short title of the Act is the *Residential Parks (Long-stay Tenants) Amendment Act 2018*.

Clause 2 Commencement

Provides that Part 1 of the Act is to come into operation on Royal Assent and the remainder of the Act will come into effect on a day fixed by proclamation. Different days may be fixed for different provisions.

A number of amendments to the Residential Parks (Long-stay Tenants) Regulations 2007 will be required before the Act can commence. The flexibility to fix commencement dates by proclamation is therefore required.

Clause 3 Act amended

Provides that this part amends the *Residential Parks (Long-stay Tenants) Act 2006*.

Clause 4 Section 3 replaced – Terms used

Section 3 is deleted and replaced with a new section 3 to define the terms used in the Act.

The glossary located at the end of the current Act is deleted and all defined terms included up front in section 3. The majority of terms are the same as those currently included in the glossary.

Key changes have been made in relation to the following defined terms:

long-stay site – this definition has been amended to remove references to the *Caravan Parks and Camping Grounds Act 1995* and ‘a fixed term of 3 months or more’. Instead the definition provides that a long-stay site is a site intended to be used as a person’s principal place of residence. These changes are consistent with amendments to the definition of long-stay agreement.

prescribed – means prescribed by regulations.

residential park – the new definition provides that a residential park means a place where there are sites on which relocatable homes are parked, assembled or erected in accordance with a tenancy. Caravan parks will still fall within the definition of a residential park.

Paragraph (b) provides that a residential park does not include a retirement village operated under the *Retirement Villages Act 1992* or a prescribed place or class of prescribed place.

successor in title – a definition of successor in title has been inserted to provide that a successor in title includes a person who acquires an estate in land or has a mortgage in respect of the land.

voluntary sharing arrangement – a definition of voluntary sharing arrangement has been included. Certain requirements must be complied with before a voluntary sharing arrangement can be included in a long-stay agreement. These requirements are set out in section 13A.

Definitions have been included for the following terms:

approved form, buyer, close associate, enter into, reasonable grounds, selling agent, tenant's documents

Minor amendments have been made to the following terms to provide clarity:

park premises, agreed premises, ADI account, bond administrator, park rules, security bond, selling agency agreement, site

Definitions of the following terms have been deleted as they are no longer required:

caravan park, lifestyle village, make, public sector body, residential park tenancy agreement, retired person, specified day, tenancy bond account

Clause 5 Section 5 replaced

Section 5 is repealed and replaced with an amended definition of 'long-stay agreement' and a new definition of 'reasonable grounds' in relation to suspecting abandonment of premises.

Section 5 – Long-stay agreements

A 'long-stay agreement' is an agreement between a park operator and a person under which the park operator grants to the person a right to occupy a relocatable home on the park as the person's principal place of residence.

The following classes of agreement are not 'long-stay agreements':

- a right to occupy for a holiday;
- a right to occupy granted to an employee or agent of the park during the term of their employment or agency;
- a right to occupy granted to an itinerant worker (a person who is undertaking seasonal work, such as fruit picking, and only occupies the premises to carry out that work); or
- a prescribed agreement or class of agreement.

The current timeframe of 3 months for a fixed term agreement has been removed as this created an unintended loophole in the legislation. In some instances, tenants have been granted rolling fixed term leases of 89 days in order to avoid the application of the Act.

Section 5A – Reasonable grounds for suspecting abandonment of premises

Provides that there are reasonable grounds for suspecting that a long-stay tenant has abandoned the agreed premises if the tenant has failed to pay rent in accordance with the long-stay agreement and one of the following applies:

- there is uncollected mail, newspapers or other material at the agreed premises;
- another long-stay tenant or other person has told the park operator that the tenant has abandoned the agreed premises;
- there are no goods at the agreed premises; or
- services have been disconnected.

Clause 6 Section 6 amended – Application of Act to long-stay agreements

A drafting amendment has been made to replace ‘long-stay agreement for a fixed term’ with ‘fixed term long-stay agreement’ so that consistent terminology is used throughout the Act.

Clause 7 Section 7 deleted - Application of Act to periodic long-stay agreements

Section 7 has been deleted as it is no longer required as a result of amendments to the definition of ‘long-stay agreement’.

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

Amends section 8 to delete the reference to ‘caravan park’ as this term is no longer defined in the Act.

Deletes subsection (2) to clarify that this Act does not apply to a Retirement Village established under the *Retirement Villages Act 1992*.

Clause 9 Section 9 amended – Contracting out

A drafting amendment has been made to the terminology in this section by replacing ‘is void and of’ with ‘has’.

Clause 10 Section 9A inserted – Modification of Act by regulations

A new provision is included to allow for regulations to modify the application of the Act in relation to specified long-stay agreements or classes of long-stay agreement or specified residential parks or classes of residential park.

This provision will allow for flexibility in the application of the Act and ensure that the operation of the Act can be modified in a timely manner in response to new developments in the sector.

This provision mirrors a similar provision that is contained in the *Residential Tenancies Act 1987*.

Clause 11 Part 2 heading amended

Amends the heading to Part 2.

Clause 12 Part 2 Division 1 heading replaced

Replaces the heading to Part 2 Division 1.

Clause 13 Section 10 replaced

Deletes section 10 and replaces it with the following sections:

Section 10 – Requirements for long-stay agreements

New section 10 includes more comprehensive requirements for the form of long-stay agreements.

Subsection 10(1) provides that a long-stay agreement must be in writing, include the standard terms (set out in Division 5 and section 55) and comply with the requirements of the Act and regulations in relation to content and form.

A penalty of \$5,000 applies if a park operator enters into a long-stay agreement that contravenes the requirements of this section.

Section 10A – Prescribed standard-form agreement

New section 10A allows for a form of standard long-stay agreement to be prescribed by regulation.

If a standard-form agreement is prescribed, then a long-stay agreement must be in that standard form.

The *Interpretation Act 1984* (WA) section 43(7)(b)(i) provides that the power to make subsidiary legislation may be exercised, among other ways, to make different provision for different cases or classes of case. Different types of standard form agreement may therefore be prescribed for different classes of long-stay agreement if appropriate.

If a standard-form agreement is prescribed at the time a long-stay agreement is entered into and the agreement does not include a term of the standard-form agreement – the long-stay agreement is taken to include that term.

A penalty of \$5,000 applies if a park operator does not use any prescribed standard-form agreement.

Section 10B – Particular terms in long-stay agreements

New section 10B provides that a long-stay agreement may include additional 'non-standard terms'.

These terms must be clearly labelled as non-standard and may not be:

- inconsistent with the Act, the standard terms or any prescribed standard-form agreement; or
- of a type prohibited by regulation.

New provisions have been included to allow for certain types of terms to be prohibited by regulation and for the regulations to prescribe certain terms that must be included in a long-stay agreement.

A penalty of \$5,000 applies if a park operator enters into a long-stay agreement that contravenes the requirements of this section.

Clause 14 Part 3 Division 1A heading inserted

Inserts a heading for Part 3 Division 1A.

Clause 15 Deletes sections 11 to 13 and replaces them with the following sections:

Section 10C – Long-stay agreement binds parks operator’s successor in title

New section 10C provides that a long-stay agreement will bind a park operator’s successor in title as if the successor in title had entered into the agreement.

Section 11 – Information for prospective long-stay tenants

New section 11 sets out a list of ‘required documents’ that must be provided before an operator enters into a long-stay agreement with a long-stay tenant.

The ‘required documents’ will contain the information currently required under section 11 of the Act. However a number of items will be consolidated into the disclosure statement referred to in proposed subsection 11(1)(b). An updated disclosure statement (currently referred to as an ‘information sheet’) will be approved by the Commissioner.

For a site-only agreement, the required documents must be provided at least five working days before an agreement is entered into. The purpose of this amendment is to allow tenants adequate time to consider the information before signing a long-stay agreement. This timeframe is considered essential in relation to site-only agreements due to the logistics and costs involved in relocating a home.

An exception to the five day requirement applies where the relocatable home is a vehicle that has been granted a licence under the *Road Traffic (Vehicles) Act 2012*. In these circumstances a vehicle licensed for use on the road is more easily movable. The prospective tenant is required to agree in writing to a waiver of the five day requirement.

For on-site home agreements, the required documents must be provided before an agreement is entered into.

A penalty of \$5,000 applies for failure to comply with the disclosure requirements. A long-stay tenant may also make an application to the State Administrative Tribunal for relief under section 62A of the Act.

Section 12 – Restrictions on amount a park operator may charge

New section 12 sets out the matters currently provided for in subsections 12(1) and (2) and restricts the types of payments that a park operator may require or receive under a long-stay agreement to:

- rent;
- security bond;
- an option fee;
- amounts authorised under the Act; and
- prescribed fees.

Any fees for services or additional facilities provided by the operator must be set out in the long-stay agreement and charged on a cost recovery basis or be reasonable in the circumstances.

The prohibition on entry fees or for renewing or extending an agreement will continue. If a payment is accepted in contravention of this section, the person who paid it will be able to seek to recover the payment in a court of competent jurisdiction as a due debt or by order in the State Administrative Tribunal.

Section 13 – Real estate agents prohibited from charging fees, charges or rewards for particular services

Section 13 re-states current subsections 12(3), (4) and (5) of the Act as subsections 13(1), (2) and (3), respectively. No amendments have been made to the wording of these subsections.

A \$5,000 penalty continues to apply for breaches of subsections 13(1) and (2).

The section outlines restrictions on fees and charges by real estate agents in relation to long-stay agreements.

Current section 13 of the Act is deleted. This amendment has the effect of prohibiting the charging of letting fees by a real estate agent and is consistent with the *Residential Tenancies Act 1987*.

Section 13A – Restriction on voluntary sharing arrangements

Section 13A sets out the requirements for inclusion of voluntary sharing arrangements in long-stay agreements. The purpose of this provision is to ensure that tenants understand the implications of agreeing to a voluntary sharing arrangement and openly choose to do so.

Voluntary sharing arrangements are defined in section 3 and include exit fees and deferred rent arrangements. A term of an agreement that provides for a voluntary sharing arrangement will have no effect unless section 13A is complied with and a disclosure document in the approved form is provided to a long-stay tenant in the manner prescribed in the regulations.

A voluntary sharing arrangement may only be entered into when the parties initially agree to the long-stay agreement and may only be varied during the life of a long-stay agreement with the consent of both parties.

In circumstances where a long-stay agreement is to be entered into with an existing long-stay tenant (for example, on the extension of a long-stay agreement at the expiry of a fixed term) or where the seller of a relocatable home is not the park operator, the park operator is prohibited from only offering a long-stay agreement with a voluntary sharing arrangement, but must also offer a rent-only agreement. An exception to this requirement applies if all agreements in a park include a voluntary sharing arrangement.

Clause 16 Section 14 amended – Cost of preparing long-stay agreement

Amends section 14 so that a park operator cannot contract out of the obligations to bear the costs of preparing a long-stay agreement.

Transitional provisions in relation to this amendment are set out in section 105.

Clause 17 Section 15 amended – Disclosure of park operator’s particulars to tenant

Amends sections 15(1) and (2) so that if a body corporate does not have a secretary, the name and business address of another authorised person must be provided.

Amends section 15(3) to clarify that notice of a change in the name or address of a park operator is to be given to a long-stay tenant within 14 days of the change.

Clause 18 Section 18 amended – Cooling off period

Amends section 18 to clarify what happens where an operator does not provide the disclosure material required under section 11.

Cooling off periods will apply in the following way:

- if an operator complies with section 11 and provides the required documents five days before the contract is entered into – a long-stay tenant may rescind the long-stay agreement within five days after the date of the agreement;
- if an operator does not comply with section 11, but provides the required documents at a later time – a long-stay tenant may rescind within 10 days after the date the documents were provided; or
- if an operator does not provide the required documents – the long-stay tenant may rescind at any time.

However a long-stay tenant may not rescind under this section after taking up occupation of the premises.

Clause 19 Section 20 replaced

Section 20 is deleted and replaced with the following new sections:

Section 20 – Age-restricted parks

New section 20 is amended to clarify the application of the provision and includes the exception currently set out in Schedule 1 Clause 9.

A park operator may not:

- refuse to enter into a long-stay agreement with a person on the ground that children will live on the agreed premises; or
- advertise or otherwise indicate such an intention; or
- instruct another person to do the same.

The purpose of this provision is to prevent park operators or their agents from discriminating against potential tenants on the grounds that children will live in the premises.

A penalty of \$5,000 applies for breach of this provision.

However, the section recognises that some parks are established for persons of a certain age (for example over 55 years) and provides an exception in certain circumstances.

A long-stay agreement may include a term to the effect that children are not permitted to occupy a site in a residential park if:

- it is intended that the park (or part of the park) be solely or principally occupied by persons of a certain age and all long-stay agreements for the park include a term to the effect that children are not permitted to reside at the agreed premises; or
- the residential park is operated under a licence under the *Caravan Parks and Camping Grounds Act 1995* and the licence permits an operator to include such a term.

Section 20A – Park operator’s continuing disclosure obligations about material changes in relation to residential parks

New section 20A requires a park operator to provide written notice to long-stay tenants as soon as practicable after the operator becomes aware of a material change.

A ‘material change’ is defined as any arrangement or restriction that might materially affect the occupation or use of a site or the park by the park operator or long-stay tenant. For example, the sale or redevelopment of the park or a change in the licensing requirements for the park.

The purpose of this amendment is to allow long-stay tenants time to deal with any change that may impact on their tenancy.

A penalty of \$5,000 applies for breach of this provision.

Clause 20 Section 21 amended – Security bonds

Section 21 is amended for consistency with the *Residential Tenancies Act 1987* including:

- insertion of a definition of ‘pet’, which excludes an assistance dog;
- insertion of subsection 21(1A) to allow for the payment of bonds by instalment;
- deletion of previous subsection 21(2)(b) which permitted operators to charge a separate bond for keys or other security devices; and
- replacement of previous subsection 21(2)(c) with new subsection 21(2)(b) which provides for payment of a pet bond in relation to any animal capable of carrying parasites (rather than just cats and dogs). The amount of the pet bond will be prescribed.

No change is made to applicable penalties.

Clause 21 Sections 22 and 23 replaced

Sections 22 and 23 are deleted and replaced with the following provision consistent with the *Residential Tenancies Act 1987*:

Section 22 - Payment of bond to bond administrator

New section 22 provides that all bonds must be deposited with the bond administrator within 14 days of receipt and can no longer be deposited in a separate bank account.

A record in the approved form must be given to the bond administrator.

A person must not make an entry in a record given to the bond administrator that the person knows is false or misleading in a material particular.

A penalty of \$20,000 applies for breach of this provision.

Transitional provisions set out in sections 99 to 103A outline how funds deposited in trust accounts prior to commencement of the changes must be dealt with.

Previous section 23, concerning records to be maintained for deposits of security bonds in financial institutions, has been deleted as it is no longer necessary.

Clause 22 Section 24 amended – Increase in security bond

Section 24 has been amended to provide that a bond increase (as a result of an increase in rent) cannot be made at intervals of less than six months for on-site home agreements and 12 months for site-only agreements. The requirement to give 60 days notice is retained.

The requirements of section 21(3) about giving a tenant a receipt and section 22 concerning depositing with the bond administrator apply to amounts received as an increase in security bond.

Clause 23 Section 26 amended – Written receipts for rent

A drafting amendment has been made to this section to clarify that a tenant must be given a receipt for rent within three working days after receiving the rent.

Clause 24 Section 28 amended – Rent records kept by park operator

Section 28 is amended for consistency with the *Residential Tenancies Act 1987* and specifies the particulars that must be recorded in relation to rent received.

Subsection 28(2) outlines the specific items that must be included in the rent record each time the rent is received, including:

- that the payment is for rent;
- the date the payment is received for rent;
- the name of the person paying the rent;
- the amount paid;
- the period in respect of which the rent is paid; and
- the site in respect of which the rent is paid.

A penalty of \$5,000 will continue to apply for breach of this provision.

Clause 25 Section 29 amended – Apportionment of rent

A drafting amendment has been made to the terminology in this section by replacing 'is to' with 'must'.

Clause 26 Section 29A inserted – Reviewing and varying rent under a long-stay agreement

New section 29A sets out requirements for rent review provisions and includes the matters currently provided for in the Act Schedule 1 Clause 4.

Minimum intervals between rent reviews will remain the same – at least six months for on-site agreements and 12 months for site-only agreements. Subsection 29A(2) allows for a shorter review period at the start of a tenancy if rent reviews in the residential park are carried out according to a set schedule and written notice of the set schedule was given to the long-stay tenant before the agreement was entered into.

A rent review clause must specify a single basis of review for each review date. Subsection 29A(3) allows for different review methods to be specified for different review dates. This is consistent with the current provision.

Rent review clauses will no longer be permitted to provide for a review of rent based on current market rent. This is consistent with the *Residential Tenancies Act 1987* and will provide greater certainty for tenants and make it easier for tenants to assess the ongoing affordability of a tenancy.

The prohibition of 'ratchet clauses' is retained. Ratchet clauses are provisions which allow rent to increase on review, but provide that rent will not decrease.

Clause 27 Section 30 amended – Process for varying rent under a long-stay agreement

Section 30 is amended so that the same process for varying rent applies to all long-stay agreements.

Subsection 30(1) clarifies that rent may only be varied if the long-stay agreement includes a term providing for variation.

Subsection 30(2) is amended to include a reference to the minimum 12 month interval between rent variations for site-only agreements. The minimum 6 month interval for on-site agreements continues to apply.

Drafting amendments have also been made to the terminology in this provision by replacing 'made' with 'entered into' and 'increased' with 'varied'.

Clause 28 Section 31 replaced

Previous section 31, which contained the requirements for variation of rent on the basis of market review, has been deleted as market review provisions will not be permitted in new long-stay agreements. However, transitional provisions set out in section 106 provide that where a pre-commencement long-stay agreement contains a market rent review provision, that provision will continue to apply until it is varied by the parties to the long-stay agreement.

Section 31 will be replaced by the following provisions:

Section 31 – Increasing rent due to significant costs increases

New section 31 sets out mechanisms to allow an operator to increase rent if necessary to cover:

- significant increased operational costs in relation to the park, including significant increase in rates, taxes or utilities for the park; or
- significant unforeseen repair costs in relation to the park.

The park operator must give at least 60 days notice in writing of the proposed increase setting out the amount of the proposed increase and the basis on which it is calculated.

Long-stay tenants will have 28 days within which to give the park operator written notice as to whether they agree to the proposed increase.

If the park operator and the tenant(s) do not agree on the proposed increase the park operator may apply to the State Administrative Tribunal for an order about the proposed increase.

Section 31A – Accelerated rent and liquidated damages prohibited

Section 31A sets out the restrictions on including terms in long-stay agreements relating to accelerated rent and liquidated damages currently provided for in the Act in Schedule 1 Clause 18(1).

A term of this nature in a long-stay agreement will be of no effect.

A new offence, with a penalty of \$5,000, has been included for breach of this provision.

Section 31B – Application of benefits and rent reductions for not breaching agreements

Section 31B sets out the matters currently provided for in the Act in Schedule 1 Clause 18(2).

If a long-stay agreement provides that, if the tenant does not breach the agreement or a written law, the tenant is entitled to a reduction in rent, rebate, refund or other benefit, then the long-stay agreement is taken to have been varied so that the benefit is granted in any event.

Clause 29 Part 2 Division 4 replaced

Previous section 32 is deleted.

Previous section 32(1) stated that Schedule 1 applies with respect to the terms of long-stay agreements. The Schedule 1 clauses will be incorporated into the Act as follows:

- Clause 1 – vacant possession – new section 32B;
- Clause 2 – no legal impediment to occupation of tenanted premises – new section 32C;
- Clause 3 – provision for rent variation (on-site home agreements) – incorporated in new section 29A and section 30;
- Clause 4 – provision for rent variation (site-only agreements) – incorporated in new section 29A and section 30;
- Clause 5 – responsibility for cleanliness – new section 32J;
- Clause 6 – responsibility for damage – new section 32K;
- Clause 7 – park operator's responsibility for cleanliness and repairs – new section 32L;
- Clause 8 – compensation when tenant sees to repairs – new section 32M;
- Clause 9 – permitting children to live on agreed premises – new section 20;
- Clause 10 – tenant's conduct on premises – new section 32G;
- Clause 11 – quiet enjoyment – new section 32D;
- Clause 12 – locks – new section 32H;
- Clause 13 – park operator's right of entry – new sections 32E and 32F;
- Clause 14 – tenant's right to remove fixtures or alter premises – new section 32I;
- Clause 15 – rates taxes and charges paid by park operator – new section 32N;
- Clause 16 – provision for assigning or subletting the premises – new section 32O;
- Clause 17 – tenant's vicarious responsibility for breach of agreement – new section 32P; and
- Clause 18 – accelerated rent and liquidated damages prohibited – new sections 31A and 31B.

Previous section 32(2) provided that a long-stay agreement could exclude, modify or restrict certain terms. Contracting out of standard terms in this manner will no longer be permitted.

The following new provisions are inserted:

Division 4 – Relocating long-stay tenants to another site in residential park

Section 32 – Long-stay agreement may include a term requiring long-stay tenant to relocate to a comparable site

Section 32 provides that a long-stay agreement may include a term allowing for the operator to require a tenant to relocate provided:

- it is reasonably necessary in the circumstances to require relocation;
- the other site is a comparable site within the same residential park; and
- the park operator pays the tenant compensation.

This new section is consistent with provisions currently included in the standard terms prescribed by the Regulations.

Section 32A – Park operator to pay long-stay tenant compensation because of relocation

Section 32A requires a park operator to pay compensation to a tenant for reasonable financial loss incurred as a result of relocation and outlines the costs, expenses and loss to be included in the compensation payment. For example, the costs of relocating and erecting the relocatable home, disconnecting and reconnecting utilities, moving the tenant's possessions and establishing landscaping at the new site.

If the parties cannot agree on the amount of compensation, an application may be made to the State Administrative Tribunal for a determination.

Section 32A is consistent with section 65 which outlines the matters to be taken into account in determining compensation payable to a tenant on termination of a long-stay agreement.

Division 5 – Standard terms

New Division 5 outlines a number of terms that will be regarded as standard terms and included in all long-stay agreements.

The standard terms are currently set out in Schedule 1 of the Act. Some terms have been amended for clarity and consistency with the *Residential Tenancies Act 1987*.

Transitional provisions in section 108 provide that the standard terms are to apply to all long-stay agreements from the commencement date.

Subdivision 1 – Occupation of premises

Section 32B – Vacant possession

Section 32B replicates the term currently provided for in Schedule 1 Clause 1 and provides that it is a term of all long-stay agreements that a tenant must be given vacant possession of the agreed premises.

Section 32C – No legal impediment to lawful enjoyment

Section 32C replicates the term currently provided for in Schedule 1 Clause 2 and provides that it is a term of a long-stay agreement that, at the time of entering into the agreement, there is no legal impediment to the tenant's lawful enjoyment of the premises that the operator is aware of or should reasonably have been aware of.

Drafting amendments have been made to improve clarity of the provision by including a definition of 'tenant's lawful enjoyment'.

Subdivision 2 – Agreed and shared premises

Section 32D – Quiet enjoyment

Section 32D(1) replicates the term currently provided for in Schedule 1 Clause 11 and provides that it is a term of a long-stay agreement that the tenant has a right to quiet enjoyment of the agreed premises. The park operator must not interfere with the reasonable peace, comfort and privacy of the long-stay tenant and has an obligation to take reasonable steps to prevent interference by other tenants.

In addition, Section 32D(2) creates an offence for a lessor to cause or permit an interference with the tenant's reasonable peace, comfort or privacy in the tenant's use of the agreed premises or shared premises.

The penalty for this offence is a maximum fine of \$10,000.

Section 32D(3) provides that a person's liability in civil proceedings is not affected by virtue of the commencement of proceedings or a conviction under this section.

Section 32E – Park operator's right of entry

Section 32E replicates the term currently provided for in Schedule 1 Clause 13 and provides that it is a term of a long-stay agreement that the park operator may only enter the agreed premises in certain specified circumstances.

The provision has been amended for clarity and for consistency with the *Residential Tenancies Act 1987*.

Section 32E(1) includes a definition of reasonable time.

Section 32E(2) provides that it is a term of a long-stay agreement that a park operator may enter the agreed premises and any other premises occupied by the long-stay tenant with the tenant's consent or in an emergency.

Section 32E(3) provides that it is a term of a long-stay agreement that the park operator may enter premises for the following purposes and sets out the relevant notice requirements:

- to meet the park operator's obligations under the Act or another written law;
- to inspect the premises or for any other purpose;
- to carry out or inspect necessary repairs or maintenance;
- to show the premises to prospective long-stay tenants;
- to show the premises to prospective purchasers of the agreed premises;
- to collect rent; and
- to inspect and secure the premises if the park operator suspects that the long-stay tenant has abandoned the premises (under section 44A).

Section 32F – Conditions of park operator's entry under s.32E

New section 32F sets out the conditions of a park operator's entry under section 32E and provides that it is a term of a long-stay agreement that:

- a park operator exercising a right of entry must do so in a reasonable manner and must not stay or permit others to stay on the premises longer than is necessary;
- a park operator must compensate a long-stay tenant for any damage done by the park operator or a person accompanying the park operator to the tenant's property when exercising a right of entry;
- a park operator must make a reasonable attempt to negotiate a day and time for entry that does not unduly inconvenience the long-stay tenant;
- the park operator may enter the premises for the purpose of routine inspection not more than four times in any 12 month period;
- the written notice given to the long-stay tenant must be in the approved form and specify the day of entry and whether the entry will be in the morning or afternoon; and
- a long-stay tenant is entitled to be on the premises when the park operator shows the premises to prospective tenants or purchasers.

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

Section 32G – Long-stay tenant's conduct on premises

Section 32G replicates the term currently provided for in Schedule 1 Clause 10 and provides that it is a term of a long-stay agreement that the long-stay tenant must not cause or permit a nuisance anywhere in the park or use the agreed premises or shared premises for an illegal purpose.

Section 32H – Locks and security

Section 32H replicates the term currently provided for in Schedule 1 Clause 12 and outlines the terms of long stay agreements relating to the provision, maintenance and alteration of locks and other security devices.

Drafting amendments have been made to the structure of subsection (6) to improve clarity.

Section 32I – Removing fixtures and altering premises

Section 32I replicates the term currently provided for in Schedule 1 Clause 14 and outlines the provisions that may be included in an agreement about adding fixtures or making alterations to the agreed premises.

Drafting amendments have been made to the structure of subsection (2) to improve clarity of the provision.

In addition, an amendment had been made to include a new provision, subsection (4), to allow an operator to affix a fixture or make an alteration to the agreed premises, but only with the consent of the long-stay tenant. A tenant may not unreasonably withhold consent.

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

Subdivision 3 – Cleanliness damage and repair

Section 32J – Long-stay tenant's responsibility for cleanliness and repair

Section 32J replicates the term currently provided for in Schedule 1 Clause 5 and provides that:

- it is a term of an on-site long-stay agreement that the tenant must keep the site and the relocatable home in a reasonable state of cleanliness; and
- it is a term of a site-only long-stay agreement that the tenant keep the site and exterior of the relocatable home in a reasonable state of cleanliness and keep the relocatable home in a reasonable state of repair so it is fit to live in.

Section 32K – Long-stay tenant's responsibility for damage

Section 32K replicates the term currently provided for in Schedule 1 Clause 6 which provides that it is a term of a long-stay agreement that the tenant must not intentionally or negligently cause or permit damage to the shared premises or agreed premises and requires a tenant to notify the park operator if damage does occur.

Drafting amendments have been made to the structure of subsections (2) and (3) to improve clarity.

Section 32L – Park operator’s responsibility for cleanliness and repairs

Section 32L replicates the terms currently provided for in Schedule 1 Clause 7 which provide that it is a term of a long-stay agreement that the park operator must provide and maintain the premises in a reasonable state of cleanliness and repair.

In addition, section 32L(2) includes specific provisions about the way in which an operator should carry out work in order to meet its maintenance and repair obligations. Work must be carried out:

- as soon as is reasonably practical and in a manner that minimises disruption to long-stay tenants;
- at an appropriate standard, having regard to the age, character and prospective life of the premises; and
- if work is to be carried out on agreed premises, the park operator must comply with the requirements of section 32E (about entry to premises)

Section 32M – Urgent repairs

Section 32M replicates the terms currently provided for in Schedule 1 Clause 8 which outlines the terms of a long-stay agreement about the carrying out of urgent repairs by operators and the circumstances in which a long-stay tenant can arrange for those repairs.

The section has been amended for consistency with the *Residential Tenancies Act 1987* to improve clarity by including definitions of ‘essential service’, ‘suitable repairer’ and ‘urgent repairs’.

Urgent repairs are repairs necessary:

- to restore essential services; or
- to avoid:
 - exposing a person to the risk of injury;
 - exposing property to damage; or
 - causing the long-stay tenant undue hardship or inconvenience.

Section 32M(3) includes clear timeframes for when it is appropriate for a tenant to arrange repairs. The subsection makes it a term of every agreement that if within the specified period (either 24 or 48 hours) after the need for urgent repairs arises the park operator is:

- unable to be contacted; or
- having been notified of the need for repair fails to ensure the repairs are carried out,

then the tenant may arrange for work to be carried out by a suitable repairer to the minimum extent necessary.

Section 32M(4) provides that it is a term of a long-stay agreement that the park operator must, as soon as practicable after the repairs are carried out, reimburse the tenant for any reasonable expense incurred in arranging for the repairs to be carried out and paying for those repairs.

Subdivision 4 – Particular financial matters

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

Section 32N replicates the term currently provided for in Schedule 1 Clause 15 which provides that it is a term of a long-stay agreement that the park operator must bear the cost of rates and taxes imposed in respect of the shared premises and agreed premises.

In addition, the section has been amended for consistency with the *Residential Tenancies Act 1987* by also including a requirement that the park operator bear the costs of contributions under the *Strata Titles Act 1985*.

Subdivision 5 – Miscellaneous provisions

Section 32O – Assigning rights and obligations under long-stay agreement or subletting agreed premises

Section 32O replicates current Clause 16 of Schedule 1 and outlines the provisions that may be included in a long-stay agreement in relation to assignment and subletting of agreed premises.

Section 32P – Long-stay tenant's vicarious responsibility for breach of agreement

Section 32P replicates the term currently provided for in Schedule 1 Clause 17 and provides that a long-stay tenant is vicariously liable for a breach of the agreement arising out of an act or omission of a person who is lawfully on the agreed premises or shared premises with the permission of the long-stay tenant.

Clause 30 Section 32Q and 32R inserted

Inserts the following new sections.

Section 32Q – Long-stay agreement may be terminated only under Act

Clarifies that a long-stay agreement may only be terminated in accordance with the Act.

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

Section 32R – Notice of intention before end of fixed term long-stay agreement

New section 32R requires a park operator to give a long-stay tenant under a fixed term long-stay agreement written notice as to whether or not the agreement will be extended or renewed at the expiry of the term. The period of notice will be prescribed in the regulations.

If an operator intends to renew or extend the agreement, the operator must provide the long-stay tenant with the terms and conditions of the proposed long-stay agreement.

The purpose of this requirement is to ensure that a tenant has adequate notice in order to make arrangements before the expiry of a fixed term. This will be of particular importance to long-stay tenants with site-only agreements, as they may be required to make arrangements to relocate their home.

Section 67 will be amended to give the State Administrative Tribunal the power to suspend an order for vacant possession if the notice is not provided.

Clause 31 Section 33 amended – How long-stay agreements are terminated

A definition of ‘period of notice’ is inserted.

Drafting amendments have been made to terminology used in the provision by replacing ‘long-stay agreement for a fixed term’ with ‘fixed term long-stay agreement’ and ‘tenant’ with ‘long-stay tenant’.

Section 33(3) is amended so that a long-stay agreement will no longer be terminated if a mortgagee enters into possession by:

- amending paragraph (b) to exclude a mortgagee; and
- deleting paragraph (c).

New paragraph (d) includes references to sections pursuant to which an agreement may be terminated for abandonment (sections 44A and 64).

New paragraphs (da) and (db) have been included to provide for termination of long-stay agreements in circumstances where all tenants have died.

Clause 32 Section 35A inserted – Fixed term long-stay agreement does not become periodic tenancy at the end of term

New section 35A confirms that a fixed term agreement does not become a periodic agreement at the end of the fixed term unless agreed by the parties.

Clause 33 Section 36 amended – Failure to give vacant possession at the end of fixed term

A drafting amendment has been made to terminology used in the provision by replacing ‘long-stay agreement for a fixed term’ with ‘fixed term long-stay agreement’.

Clause 34 Section 37 amended – Form of default notice

A drafting amendment has been made to terminology used in the provision by replacing ‘the prescribed information (if any)’ with ‘any prescribed information’.

Clause 35 Section 38 amended – Form of notice of termination

Section 38 has been amended to provide that a notice of termination must be in the approved form.

A drafting amendment has been made to terminology used in the provision by replacing ‘the prescribed information (if any)’ with ‘any prescribed information’.

Clause 36 Part 3 Division 2 heading amended

The heading for Part 3 Division 2 is amended to 'Grounds for notice'.

Clause 37 Section 39 amended – Termination by park operator for non-payment of rent

Section 39 has been amended to include definitions of 'default day' and 'specified day' for the purposes of the section.

Drafting amendments have been made to terminology used in the provision by replacing 'tenant' with 'long-stay tenant' and 'day specified' with 'specified day'.

Clause 38 Section 40 amended – Termination by park operator for other breaches

Section 40 has been amended to include definitions of 'default day' and 'specified day' for the purposes of the section.

Drafting amendments have been made to terminology used in the provision by replacing 'tenant' with 'long-stay tenant' and 'day specified' with 'specified day'.

Clause 39 Section 41 amended – Termination if vacant possession required on the sale of a park

Section 41 has been amended so that a fixed-term tenancy can no longer be terminated before the end of the fixed term if the park operator has entered into a contract for sale of the park with vacant possession.

Section 41(3)(c)(i) permits termination of a fixed term long-stay agreement if the tenant agrees in writing.

Termination of periodic long-stay agreements on the sale of a park will continue to be permitted.

A definition of 'specified day' has been included for the purposes of the section.

Transitional provisions in section 109 preserve the right to terminate a fixed term long-stay agreement on the sale of a park for a long-stay agreement entered into before commencement of the amendment to section 41 (compensation is payable under section 46).

Clause 40 Sections 41A to 41D inserted

Section 42 currently provides for termination of long-stay agreements 'without grounds'. Section 42 is amended to provide that 'without grounds' termination only applies in relation to on-site agreements (i.e. where the tenant rents both the relocatable home and the site from the park operator).

New sections 41A to 41D are inserted to set out additional specific grounds for termination of long-stay agreements, aimed at replacing the broader 'without grounds' termination.

Section 41A – Termination because park to be used for a different purpose

New section 41A provides that an operator may give a notice of termination to the long-stay tenant on the ground that the residential park will be closed or used for another purpose.

If development approval is required for the proposed purpose, the operator may only terminate if that approval has been granted.

An operator must give the Commissioner seven days notice in writing of their intention to terminate long-stay agreements on this basis.

The notice of termination must be in accordance with section 41D.

Section 41B – Termination because vacant possession is required for works

New section 41B provides that an operator may give a notice of termination to the long-stay tenant because the operator requires vacant possession of the site to carry out works.

Evidence must be given to the tenant showing the basis upon which the works are to be carried out.

The notice of termination must be in accordance with section 41D.

Section 41C – Termination because long-stay site is intended to be used for another purpose

New section 41C provides that an operator may give a notice of termination to the long-stay tenant on the ground that the site the subject of the agreement is intended to be used for a purpose other than a long-stay site.

If development approval is required for the proposed purpose, the operator may only terminate if that approval has been granted.

The notice of termination must be in accordance with section 41D.

Section 41D – Requirements of notice of termination under s.41A to 41C

New section 41D sets out the requirements for a notice of termination under sections 41A to 41C.

The notice must:

- comply with section 38 (which sets out the requirements for the form of the notice of termination);
- state the relevant section and grounds upon which the agreement is terminated; and
- specify the day on which the operator requires vacant possession.

The specified day must be:

- at least 180 days after the notice is given for a site-only agreement;
- at least 60 days after the notice is given for an on-site home agreement; and
- cannot be before the end of the term for a fixed term agreement.

Clause 41 Section 42 amended – Termination by park operator without grounds

Section 42 is amended so that ‘without grounds’ termination by a park operator applies only in relation to on-site home agreements.

A definition of ‘specified day’ has been included for the purposes of the section.

Clause 42 Section 44 amended – Termination by tenant without grounds

A drafting amendment has been made to terminology used in the provision by replacing ‘tenant’ with ‘long-stay tenant’.

A definition of ‘specified day’ has been included for the purposes of the section.

Clause 43 Part 3 Division 3A inserted

Division 3A is inserted to set out mechanisms for termination of a long-stay agreement if the tenant has abandoned the premises.

Division 3A – Agreed premises abandoned

Section 44A – Park operator’s right of entry in relation to abandonment

New section 44A provides that if a park operator suspects on reasonable grounds that the long-stay tenant has abandoned the premises the park operator may enter the agreed premises to inspect and secure the premises.

Before entering the premises the operator must give the long-stay tenant 24 hours notice in the approved form containing the information set out in subsection 44A(2). If the tenant does not respond within 24 hours the park operator may enter the premises.

The notice may be given by leaving a copy at the agreed premises and either leaving a copy at the tenant’s last known place of employment or business or providing a copy by electronic means (if the tenant and park operator have agreed to this method of service).

Section 5A includes a definition of reasonable grounds for believing that a long-stay tenant has abandoned the agreed premises.

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

Section 44B – Termination if agreed premises abandoned

New section 44B provides that if a park operator suspects on reasonable grounds that the long-stay tenant has abandoned the premises the park operator may give a notice of abandonment to the tenant terminating the long-stay agreement. The notice must be in the approved form and contain the information set out in subsection 44B(2).

If a tenant does not take action within seven days of receiving the notice, the tenant is taken to have abandoned the premises and the long-stay agreement is terminated.

Section 5A includes a definition of reasonable grounds for believing that a long-stay tenant has abandoned the agreed premises.

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

Clause 44 Section 45 amended – Termination if agreement frustrated

A drafting amendment has been made to terminology used in the provision by replacing 'is to' with 'will'.

A definition of 'specified day' has been included for the purposes of the section.

Clause 45 Section 46 amended – When long-stay tenant is entitled to compensation as a result of termination of agreement

A drafting amendment has been made to terminology used in subsection 46(1) by replacing 'long-stay agreement for a fixed term' with 'fixed term long-stay agreement'.

Paragraph 46(1)(b) is deleted. Termination of a fixed term agreement is not permitted under section 42 before the expiry of a fixed term. This paragraph is therefore not required.

Paragraph (1)(d) has been amended to reflect the amendment to the heading of section 73.

Clause 46 Section 47 amended – When park operator is entitled to compensation

Section 47 is amended to include a park operator's right to compensation upon termination by a tenant on the grounds of hardship.

Clause 47 Section 47A inserted – Application of Division

Section 47A is inserted to deal with the abandonment of goods other than a tenant's documents. Abandonment of a tenant's documents is dealt with separately under section 52A.

Other goods may be excluded from the application of this Division by regulation. This will permit flexibility in circumstances where the abandonment of certain goods, such as caravans, are dealt with by other legislation.

Clause 48 Section 48 amended – Disposing of goods abandoned by the tenants

Subsection 48(1A) is inserted to include a definition of ‘storage period’ and subsection 48(3) is amended to replace ‘60 days’ with ‘the storage period’.

Replaces subsection 48(4) to remove the requirement for a notice of abandoned goods to be published in a newspaper and replaces it with a requirement that a park operator:

- give the tenant notice in the approved form within seven days after storing the abandoned goods; or
- do both of the following:
 - arrange for the notice in the approved form to be made publicly available in the prescribed manner within seven days of storing the abandoned goods; and
 - display the notice in a prominent position at the residential park within nine days after storing the goods.

Inserts a penalty of \$5,000 for breach of subsections (3) and (4).

Amends subsection (6) to correct gender specific references and to correct an anomaly as this subsection should refer to subsection (2), not subsection (1).

The amendments are consistent with the *Residential Tenancies Act 1987*.

Clause 49 Section 51 amended – Park operator’s liability for abandoned goods

Inserts subsections (1) and (2) to provide that a park operator will not be liable for loss caused in respect of removal, storage, sale, destruction or disposal of abandoned goods in certain circumstances. Some exceptions are set out in subsection (2) so that an operator will be liable for intentional or negligent damage to goods or where an operator fails to give a person with an interest in goods notice of the whereabouts of the goods and an opportunity to reclaim the goods.

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

Clause 50 Section 52 amended – Disposition of proceeds of sale of abandoned goods

Inserts a note at the end of section 52 about the ability of the park operator to apply to the State Administrative Tribunal in certain circumstances for an order to be paid out of the Rental Accommodation Account if the proceeds of sale of abandoned goods are insufficient to meet the costs of removing, storing and selling the goods.

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

Clause 51 Part 3 Division 6A inserted

Division 6A is inserted to set out the process for dealing with a tenant’s abandoned documents.

Section 3 of the Act includes a definition of ‘tenant’s document’.

Section 52A - Dealing with abandoned tenant's documents

The section applies if a tenant's documents are left at the agreed premises after the long-stay agreement is terminated.

A park operator has an obligation to take reasonable care of the tenant's documents for a period of 60 days and to take reasonable steps to notify the tenant (or the lawful owner of the document) that the document remains on the premises and how the document may be collected.

A person who has a lawful right to a document may reclaim the document within 60 days provided they pay the park operator's reasonable costs of storing and notifying a former tenant or lawful owner about the documents.

If documents are not claimed within the storage period, the park operator may destroy or dispose of the documents.

A penalty of \$5,000 is applicable for breach of the requirements of this section.

Subsection (7) provides that nothing in this section affects the operation of another law affecting the destruction or disposal of documents.

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

Clause 52 Part 4 Division 1A inserted

Division 1A is inserted relating to the making, alteration and enforcement of park rules.

Currently section 95(2)(f) provides that the regulations may prescribe matters to be provided for in park rules and may regulate the manner in which the provision for those matters is to be made. Current regulations provide that the park rules must provide for certain matters and outline a process for amendment of park rules.

Section 54A – Park operator may make park rules

New section 54A provides that a park operator may make rules for tenants about the use, enjoyment, control and management of the park.

The park rules must be:

- made in accordance with Part 4 Division 1A;
- not require a tenant to undertake significant works (unless the work is required for health or safety reasons);
- be fair and reasonable;
- be clearly expressed; and
- operate in a prospective way.

Section 54B – Regulations may provide for matters in park rules

New section 54B replicates current section 95(2)(f) and provides that the regulations may prescribe matters that must be included in the park rules. In addition, section 54B provides that the regulations may prescribe types of rules that must not be included.

A penalty of \$5,000 is applicable for breach of the requirements of this section.

Section 54C – Making and altering park rules

New section 54C provides that regulations may prescribe the way in which a park operator is to make or alter park rules. A park operator may only make or alter rules in accordance with these regulations.

Section 54D – Compliance, application and enforcement of park rules

New section 54D outlines the obligations for both tenants and park operators concerning compliance, application and enforcement of park rules.

Clause 53 Section 55 amended – Long-stay tenant’s right to sell relocatable home on site

Section 55 is amended so that a tenant’s right to sell a relocatable home while it is located on a site may not be excluded by contract.

A transitional provision set out in section 113 states that a provision excluding this right, that is included in a long-stay agreement prior to commencement, will remain valid.

Clause 54 Section 56 to 58 replaced

Sections 56 to 58 are deleted and replaced with the following provisions concerning the sale of relocatable homes.

Section 55A – Information to be given to purchaser of relocatable home on site

New section 55A requires a tenant or their agent (the seller) to provide a purchase disclosure notice to a potential buyer of a relocatable home before the buyer signs a contract to purchase the home.

The purchase disclosure notice will be in an approved form and will outline the following types of matters:

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

The purpose of this amendment is to ensure that a potential buyer is informed as to the nature of the long-stay tenancy arrangement before entering into an agreement to purchase the relocatable home.

Section 64A provides that a potential buyer may apply to the State Administrative Tribunal for particular orders if a purchase disclosure notice is not provided.

Section 56 – Park operator’s obligations

Section 56 is replaced with a new section 56 to provide that a park operator must not hinder or obstruct the sale of a relocatable home by a long-stay tenant.

This provision is broader than current section 56 which simply provides that a park operator is not to unreasonably restrict potential buyers from inspecting the relocatable home or shared premises.

A penalty of \$20,000 continues to apply.

Section 57 – Tenant may appoint selling agent

New section 57 replaces current section 57(1) and clarifies that a long-stay tenant may appoint the park operator or any other person to act as a selling agent for the sale of a relocatable home. A selling agency agreement must be in writing and comply with any prescribed requirements.

New specific provisions are included to provide that a park operator must not require a long-stay tenant to appoint a particular person as a selling agent and that a park operator must not unreasonably hinder a selling agent's access to the park.

A penalty of \$5,000 applies for breach of these requirements.

Section 57A – Selling agent's commission and incidental expenses

New section 57A expands current subsections 57(2), (3) and (4) and clarifies the requirements for payment of a commission and incidental expenses to a selling agent.

A person must not demand or receive a sale commission, an amount for incidental expenses or other consideration in relation to the sale of a relocatable home unless the person has been appointed as a selling agent under a selling agency agreement and that agreement complies with the prescribed requirements.

A penalty of \$5,000 applies for breach of this requirement.

A selling agency agreement must clearly specify the commission and incidental expenses and how they are calculated.

No commission is payable if the relocatable home is not sold or it is sold otherwise than as a result of the actions of the selling agent. A commission is also not payable if the park operator is the selling agent and there is a voluntary sharing arrangement in place or the home is sold to the park operator or a close associate of the park operator.

If a payment is accepted in contravention of this section, the person who paid it will be able to seek to recover the payment as a debt due in a court of competent jurisdiction.

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

Section 57B replicates current subsection 58(1) and provides that when a park operator acts as a selling agent, the operator is not required to hold a licence of an agent under the *Real Estate and Business Agents Act 1978* or a dealer's licence under the *Motor Vehicle Dealers Act 1973*.

Section 57C – Trust accounts for selling agents

Section 57C replicates previous subsections 58(2) and (3) and is amended to provide that if a selling agent receives money under the selling agency agreement, the selling agent must:

- if the selling agent is licensed under the *Motor Vehicle Dealers Act 1973* or *Real Estate and Business Agents Act 1978* – deposit the monies in a trust account maintained under the relevant licensing Act; or
- deposit monies received in a sale trust account and comply with the requirements relating to trust accounts set out in the *Real Estate and Business Agents Act 1978* section 68(2)-(6).

A penalty of \$3,000 applies for breach of these requirements.

Section 57D – Park operator’s recovery of reasonable expenses for sale of a relocatable home

New section 57D provides for the recovery by the park operator of reasonable expenses incurred in assessing the suitability of a potential buyer on the sale of a relocatable home on site.

This right is currently provided for in Schedule 8 of the Regulations.

Section 58 – Sale of relocatable home at agreed premises conditional on assignment of rights and obligations under, or entry into, long-stay agreement

New section 58 provides that an agreement for the sale of a relocatable home is conditional on a long-stay agreement for the site being entered into between the buyer and the park operator (either a new agreement or an assignment of the seller’s rights and obligations under an existing long-stay agreement).

A sale contract will be of no effect if the buyer and park operator cannot agree on the terms of the agreement or the operator refuses on reasonable grounds to enter into an agreement.

The timeframe for the making of an agreement is set out in subsection (3) and is the later of:

- the determination of an application by the State Administrative Tribunal under section 62A(2)(f); or
- 60 days or another period agreed by the long-stay tenant and the buyer.

A park operator will be required to enter into an agreement unless there are reasonable grounds for refusing to do so, for example, if a buyer does not meet the criteria to be a tenant in a park or if the use of the site is to change.

Section 62A allows a long-stay tenant to make an application to the State Administrative Tribunal if a park operator does not comply with the requirement to enter into an agreement with a buyer.

The purpose of this provision is to ensure that a buyer is not bound by a contract to purchase a relocatable home unless the underlying tenancy arrangement for the long-stay site is also in place.

Clause 55 Section 59 amended – Establishment of park liaison committee

Section 59(1) is amended to provide that a park liaison committee is only required if the majority of tenants support the establishment of the committee.

The penalty of \$5,000 is retained for breach of this provision.

The regulations will prescribe the manner in which a vote is to be undertaken to determine if establishment of a park liaison committee is supported by long-stay tenants.

Clause 56 Section 60 amended – Constitution of park liaison committee

Subsection (3) is deleted and replaced with a new subsection which provides that the regulations may prescribe the way in which the members of a park liaison committee are to be chosen.

New subsection (4) provides that a park operator must not unduly interfere with how tenant representatives are chosen.

A penalty of \$5,000 applies for breach of this provision.

Clause 57 Section 61 amended – Functions of park liaison committee

Drafting amendments have been made to terminology in section 61 by replacing ‘matter prescribed by the regulations’ with ‘prescribed matter’ and ‘function prescribed by the regulations’ with ‘prescribed function’.

Clause 58 Section 61A inserted – Other long-stay tenant committees

New section 61A clarifies that nothing in the Act prevents tenants from forming committees with different functions to a park liaison committee.

Clause 59 Sections 62 to 64 replaced

Sections 62 to 64 are deleted and replaced with the following sections.

Section 62 – Orders if form of long-stay agreement does not comply with Pt. 2 Div. 1

New section 62 provides that a long-stay tenant may apply to the State Administrative Tribunal for relief if an agreement does not meet the requirements of sections 10, 10A or 10B in relation to content and form.

Subsection (2) sets out the range of orders that may be made by the State Administrative Tribunal, including an order:

- terminating the long-stay agreement;
- determining the terms of the long-stay agreement;
- that a term has no effect; and
- that the park operator prepare an agreement that complies with the Act.

Section 62A – Breaches of agreement and other disputes

Section 62A replaces current section 62(1) and (2) and sets out the circumstances in which a party to a long-stay agreement may apply to the State Administrative Tribunal for relief.

The ability of a party to apply for relief in relation to a breach of a long-stay agreement or a dispute under a long-stay agreement has been retained.

In addition, the following specific circumstances have been included:

- if a term of a long-stay agreement is harsh, unreasonable or inconsistent with the Act;
- if the park operator has contravened the disclosure obligations in section 11 or 20A of the Act; and
- if the park operator refuses to enter into a long-stay agreement with the buyer or consent to the assignment of a long-stay agreement on the sale of a relocatable home.

Section 62B – Matters the State Administrative Tribunal may consider

New section 62B provides that in making a decision under the Act the State Administrative Tribunal may consider whether the park operator or long-stay tenant:

- made false or misleading representations;
- engaged in misleading or deceptive conduct;
- engaged in unconscionable conduct; or
- used physical force, undue harassment or coercion.

This type of conduct is currently prohibited under the Australian Consumer Law. This section will allow the State Administrative Tribunal to consider all issues arising in relation to a dispute under a long-stay agreement and to make appropriate orders.

Section 62C – Directions and orders

Section 62C replaces current section 62(3) and (4) and sets out the orders and directions that may be made by the State Administrative Tribunal.

The power of the State Administrative Tribunal to make any order it considers appropriate has been retained, as well as the specific orders previously set out in section 62(4).

Provisions have been included to enable the Tribunal to make the following additional specific orders:

- in relation to breach of disclosure obligations – if satisfied that the tenant would not have entered into the contract had disclosure been made, an order for termination and any other appropriate orders;
- if a term of the long-stay agreement is harsh, unreasonable or inconsistent with the Act – declare that the term has no effect; and
- on the sale of a relocatable home – order the park operator to enter into a new long-stay agreement or consent to the assignment of an existing agreement under section 58.

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

New section 62D 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.

Subsection (2) sets out the orders that may be made by the State Administrative Tribunal, including:

- payment of compensation;
- termination of the long-stay agreement;
- specific performance; and
- reduction in rent.

Section 63 - Orders for reduction of rent

Section 63 replicates current section 63 which gives the State Administrative Tribunal the power to order a reduction of rent in certain circumstances.

A drafting amendment has been made to subsection (1) by changing the numbering of the provision to improve clarity.

Subsection (4) has been amended by replacing ‘may’ with ‘must’ to clarify that the State Administrative Tribunal must take the factors into account.

Section 63A – Determination of proposed rental increase under s.31

New section 63A provides that the park operator may apply to the State Administrative Tribunal in relation to a proposed increase in rent under section 31 (varying rent due to significant costs increases).

Subsection (2) outlines the orders that may be made by the State Administrative Tribunal, including an order confirming, reducing or setting aside the increase.

Subsection (3) outlines the matters that the State Administrative Tribunal must have regard to in making an order, including the current rent, the proposed increase, any previous rent increases, the nature and standard of facilities at the park, the significant cost increases or unforeseen costs that necessitate the proposed increase and whether the increase is fair and equitable in all the circumstances.

Section 63B – Disputes about park rules

New section 63B provides that a long-stay tenant or a park operator may apply to the State Administrative Tribunal for relief in relation to the nature, application and enforcement of park rules.

A long-stay tenant may make an application for the following reasons:

- a park rule is harsh or unreasonable;
- a park rule is not applied or enforced in a reasonable, fair or equitable way;
- the manner a rule is applied affects the tenant in a harsh or unreasonable way; or

- the park rule does not comply with the requirements of the Act or regulations.

Subsection (5) sets out the powers of the State Administrative Tribunal, including the power to:

- order that a person comply with the park rules;
- revoke or alter a park rule or modify its operation; or
- make another order the tribunal considers appropriate.

Section 63C – Recognising persons as long-stay tenants

New section 63C provides that a person who is occupying premises (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, in circumstances where the resident has asked to be named as a tenant and the park operator has refused.

Subsection (4) outlines the orders that may be made by the State Administrative Tribunal.

Subsection (5) provides that the State Administrative Tribunal must consider whether the resident is suitable to be recognised as a tenant for the particular park. For example, if a residential park is an age restricted park, then the resident would need to meet the criteria with regards to age.

This provision is consistent with the *Residential Tenancies Act 1987* section 59C.

Section 64 – Orders requiring works after failure to comply with responsibility for cleanliness and repair under s.32L

New section 64 provides that a long-stay tenant may make an application to the State Administrative Tribunal if a park operator fails to comply with the obligation to maintain and repair premises under section 32L.

Subsection (2) outlines the orders that may be made by the State Administrative Tribunal, including orders for compensation, specific performance and any other order the tribunal considers appropriate.

Section 64A – Orders if potential buyer not given a purchase disclosure notice

New section 64A provides that a potential buyer may apply to the State Administrative Tribunal when the buyer is not given a purchase disclosure notice under section 55A by a seller in relation to the sale of a relocatable home.

Subsection (1) outlines the orders that may be made by the State Administrative Tribunal, including orders for compensation, rescission of the contract for sale and any other order the tribunal considers appropriate.

Subsection (2) provides that in making an order the State Administrative Tribunal must have regard to whether the potential buyer has been disadvantaged by not being given the purchase disclosure notice and to any other relevant matter.

Section 64B – Determination of compensation payable to long-stay tenant because of relocation under s.32A

New section 64B provides that a party to a long-stay agreement may apply to the State Administrative Tribunal in relation to determination of compensation payable to a long-stay tenant for relocation within a residential park.

In making a determination the tribunal must have regard to the matters set out in section 32A(1).

Section 64C inserted – Orders in relation to site-only agreement if long-stay tenants die and removal or sale of home is obstructed

New section 64C provides that a long-stay tenant's estate or personal representative may apply to the State Administrative Tribunal in circumstances where every long-stay tenant to a site-only agreement has died and the operator is interfering with or obstructing the sale or removal of the relocatable home.

Subsection (3) outlines the orders that may be made by the State Administrative Tribunal, including ending the agreement, reducing the rent, suspending or terminating the obligation to pay rent and any other order the tribunal considers appropriate.

Clause 60 Section 65 amended – Determination of compensation payable to long-stay tenant

Amends section 65 to include the following additional matters that may be taken into account by the State Administrative Tribunal in determining compensation payable to a long-stay tenant on the termination of a long-stay agreement:

- for site-only agreements
 - the cost of transporting a tenant's possessions; and
 - any other financial loss incurred as a result of the termination.
- for on-site agreements:
 - the cost of disconnecting and reconnecting utilities.

These amendments are made to ensure that a consistent approach is taken in relation to both site-only and on-site agreements.

Drafting amendments have also been made to terminology used in the provision by replacing 'may' with 'must' and correcting gender specific terminology.

Clause 61 Section 67 amended – Orders for vacant possession at end of fixed term

Inserts subsection (7) to provide that the State Administrative Tribunal may suspend an order for vacant possession for a further period (to be determined by the Tribunal) if the park operator did not provide the tenant with notice under section 32R stating that the operator did not intend to enter a new long-stay agreement with the tenant.

Drafting amendments have also been made to terminology used in the provision by replacing ‘long-stay agreement for a fixed term’ with ‘fixed term long-stay agreement’ and ‘agreement’ with ‘long-stay agreement’ and correcting gender specific terminology.

Clause 62 Section 68 amended – Orders for vacant possession on other grounds

Subsection (4) has been amended to update the reference to the *Limitation Act 2005*.

A definition of ‘specified day’ has been included for the purposes of the section.

Drafting amendments have also been made to terminology used in the provision by replacing ‘agreement’ with ‘long-stay agreement’ and correcting gender specific terminology.

Clause 63 Section 69 amended – Orders for compensation to park operator for holding over

Drafting amendments have also been made to terminology used in the provision by replacing ‘tenant’ with ‘long-stay tenant’.

Clause 64 Section 70 amended – Tenant’s protection against holder of superior title

Paragraph (1)(aa) is inserted to clarify that an order for possession may only be made if a person has a right to possession under this Act or another written law.

Clause 65 Part 5 Division 2A inserted – Orders relating to abandoned premises

Inserts new Division 2A relating to orders about abandoned premises.

Section 70A – Disputing section 44B notice

New section 70A provides that a long-stay tenant who has received a notice of termination on the grounds of abandonment under section 44B may apply to the State Administrative Tribunal for an order setting aside the notice or for compensation.

The tenant must make the application to the State Administrative Tribunal within 28 days of receiving the notice of termination. The tribunal may only make an order setting aside the notice of termination if the tenant has made an application within 7 days of the notice. The tribunal may make any other order it considers appropriate.

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

Section 70B – Orders to terminate agreement because agreed premises abandoned

Section 70B provides that a park operator may apply to the State Administrative Tribunal for an order terminating the long-stay agreement on the ground that the tenant has abandoned the premises.

The tribunal may also make an order specifying the amount of compensation the park operator is entitled to under section 47(1).

Previous section 64 provided that a park operator could apply to the State Administrative Tribunal for a declaration that the premises had been abandoned and for compensation.

Clause 66 Section 71A inserted - Orders to terminate agreement for repeated interference with quiet enjoyment

New section 71A provides that a park operator may apply to the State Administrative Tribunal for termination of a long-stay agreement if a long-stay tenant (or the tenant's guest) repeatedly interferes with the quiet enjoyment of the park by other tenants and has continued this behaviour after being given notice to cease. Termination of the agreement must be justified in all the circumstances.

Subsection (3) provides that the State Administrative Tribunal may refuse to make an order if satisfied that the park operator was wholly or partly motivated to give the notice by the fact that the tenant had complained to a public authority or taken steps to enforce their rights.

Clause 67 Section 73 amended – Termination on grounds of hardship

Amends section 73 to provide that a long-stay tenant may also apply for termination on grounds of hardship.

New subsection (2A) provides that the State Administrative Tribunal may make an order for compensation when making an order for termination on this ground.

Clause 68 Section 76 amended – Park operator's claim for costs in relation to abandoned goods and tenant's documents

Amends section 76 to include a right for a park operator to recover costs incurred in relation to discharging the operator's duties in dealing with abandoned documents under new section 52A.

Clause 69 Section 77 amended – Recovery by owner of value of goods sold

A drafting amendment has been made to this provision to correct gender specific terminology.

Clause 70 Section 79 amended – Proceedings instituted or defended by the Commissioner

A drafting amendment has been made to this provision to correct gender specific terminology.

Clause 71 Section 81 amended – Conduct of legal proceedings by Commissioner

A drafting amendment has been made to this provision to correct gender specific terminology.

Clause 72 Section 83A inserted – State Administrative Tribunal may refer matter to Commissioner for investigation

New section 83A enables the State Administrative Tribunal to refer a matter to the Commissioner for investigation if the tribunal suspects that an offence against the Act has been committed.

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

Clause 73 Section 88A inserted – Long-stay agreements excluded matters for Corporations Act 2001 (Commonwealth) s.5F

New section 88A provides that long-stay agreements are excluded from the application of Chapter 5 Part 5.6 Division 7A of the *Corporations Act 2001* (Commonwealth) which gives a liquidator of a company the power to disclaim onerous property, including contracts.

The purpose of this amendment is to ensure that a liquidator of a park operator cannot disclaim long-stay agreements.

Clause 74 Section 90 amended – Time for commencement of offence proceedings

Amends section 90 to extend the time to bring proceedings for an offence under the Act from two years to three years.

Clause 75 Section 90A inserted – Infringement notices and Criminal Procedure Act 2004

New section 90A sets out modifications to the *Criminal Procedure Act 2004* that will apply in relation to service of infringement notices.

The *Criminal Procedure Act 2004* requires that an infringement notice must be issued within 21 days of an offence.

Subsection (2) provides that an infringement notice must be served within:

- 21 days after an authorised officer forms the opinion that there is sufficient evidence to support the allegation of the offence; and
- six months after the alleged offence is believed to have been committed.

This provision is consistent with the *Residential Tenancies Act 1987* and will give sufficient time for offences to be identified.

It is intended that the Act will be a 'prescribed Act' for the purposes of the *Criminal Procedure Act 2004* in order to allow for infringement notices to be issued for certain offences.

Clause 76 Section 91 amended – Service of documents

Amends subsection (1) to provide that notices or documents required or authorised to be given under the Act may be given by electronic means in accordance with the regulations provided that the parties have agreed, or in other circumstances set out in the regulations.

Amends subsection (3) to require, where the address of a person is unknown, that a notice may be given by:

- publishing a copy in a newspaper operating throughout all or most of the State;
- an alternate means ordered by a court or the State Administrative Tribunal; or
- by making them publicly available in another manner prescribed, including by means of a website.

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

Clause 77 Sections 92 and 93 deleted

Sections 92 and 93 are deleted as security bonds are no longer to be held in ADI accounts.

Sections 101 to 103A set out transitional provisions in relation to ADI accounts.

Clause 78 Section 95 amended – Regulations

Amends section 95(2) by deleting paragraphs (b) to (d) and (f) as these matters are dealt with elsewhere in the Act.

Clause 79 Section 96 replaced

Section 96 has been deleted and replaced with the following.

Section 96 – Review of Act

New section 96 provides that the Minister must review the operation and effectiveness of the Act and prepare a report on the review as soon as practicable after the fifth anniversary of the date on which section 3 of this Act comes into operation.

The report must be tabled as soon as practicable after it is prepared.

Clause 80 Part 7 heading and Part 7 Division 1 heading inserted –Transitional and savings provisions

Inserts a heading for Part 7 transitional and savings provisions and for the transitional provisions for the 2006 Act.

Clause 81 Part 7 Division 2 inserted

Inserts the following Division after section 97.

Division 2 – Transitional and savings provisions – *Residential Parks (Long-stay Tenants) Amendment Act 2018*

Section 99 – Terms used

Outlines the definitions applicable in relation to this Division.

Section 100 – Return of key bond to long-stay tenant

Outlines the requirements for repayment of a key bond to a long-stay tenant after the commencement day. This amount must be returned to the tenant as soon as practicable after the renewal of the long-stay agreement or an increase in security bond, or in any case, not later than 18 months after the commencement day.

Section 101 – Amounts paid into tenancy bond account to be transferred to bond administrator

Section 101 requires that all existing security bonds held in a tenancy bond account are transferred to the bond administrator or the tenant as soon as practicable after the renewal of the long-stay agreement or an increase in security bond, or in any case, not later than 18 months after the commencement day.

A penalty of \$5,000 applies for breach of this provision.

Section 102 – Requirements for holding security bond amounts

Section 102(1) replicates the matters previously provided for in section 92 and outlines the terms on which an authorised deposit taking institution must hold a security bond.

An authorised deposit taking institution must keep the records set out in subsection (3) in relation to an amount held in an ADI account under section 101(1).

Section 103 – Information from authorised deposit-taking institution about tenancy bond accounts

Section 103 replicates the previously provided for in subsections 93(1) and (2) and sets out the powers of the Commissioner to require information from an authorised deposit taking institution.

Section 104 – Offences relating to s.103

Section 104 replicates the offences previously provided for in subsections 93(3) to (7) and sets out offences relating to the provision of information to the Commissioner by an authorised deposit taking institution.

Section 105 – Pre-commencement long-stay agreement provides for cost of preparing long-stay agreement

Section 105 provides that, if a pre-commencement agreement includes a term requiring a person other than the park operator to bear the costs of preparing the agreement, the term is to continue to have effect after the commencement day.

Section 106 – Variation of rent on the basis of market rent

Section 106 provides that despite amended section 29A(1)(c), which prohibits rent reviews based on market rent, any market rent review provision in a pre-commencement long-stay agreement will continue to have effect.

Subsection (3) sets out the requirements for a market rent review previously provided for in former section 31.

Section 107 – Variation of rent under on-site agreements entered into before commencement day

Section 107 provides that the process for undertaking a rent review for on-site agreements set out in former section 30 is to continue to apply after the commencement day to pre-commencement long-stay agreements.

Section 108 – Application of former s.32 to pre-commencement on-site long-stay agreements

Former section 32(2) permitted a long-stay agreement to exclude, restrict or modify a term set out in former Schedule 1.

Section 108 provides that the standard terms set out in Division 5 apply to all long-stay agreements from commencement. Any term varying the Schedule 1 terms will be of no effect to the extent that it is inconsistent with a provision of the Act in effect from the commencement day.

Subsection (3) makes it clear that a person does not commit an offence if a pre-commencement long-stay agreement includes a term permitted by former section 32(2).

Section 109 – Taking possession of agreed premises under mortgage entered into before the commencement day

Provides that the amendments to section 33 relating to termination on mortgagee possession do not apply to a mortgage entered into before the commencement day.

Section 110 – Former s.41 continues to apply to pre-commencement long-stay agreements

Section 41 has been amended to provide that a fixed term long-stay agreement cannot be terminated before the end of the fixed term on the ground that the residential park is to be sold with vacant possession. This amendment does not apply to pre-commencement long-stay agreements.

Section 111 – Amended s.42 applies to site-only agreements entered into before commencement day

Clarifies that the ability to terminate a long-stay agreement without grounds does not apply in relation to all site-only agreements from the commencement day.

Section 112 – Park rules made by park liaison committee before commencement day taken to be made by park operator

Provides that park rules made before the commencement day by a park liaison committee are taken to have been made by the park operator under section 54A.

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

Provides that any term of a pre-commencement long-stay agreement prohibiting on-site sale of a relocatable home continues to have effect despite amendments to section 55.

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

Provides that former section 57 continues to apply to a selling agency agreement entered into before the commencement day.

Section 115 – Transitional regulations

Provides for the making of regulations to deal with matters of a transitional nature.

Clause 82 Schedule 1 deleted

Schedule 1 is deleted and the provisions included in the Act.

Clause 83 Glossary deleted

The glossary is deleted and the definitions included in sections 3 and 5A of the Act.

Part 3 – Residential Tenancies Act 1987 amended

Clause 84 Act amended

Provides that this part amends the *Residential Tenancies Act 1987*.

Clause 85 Schedule 1 clause 3 amended

Amends Schedule 1 clause 3 to update references to the *Residential Parks (Long-stay Tenants) Act 2006*:

- in clause 3(2)(bc) by replacing 'section 92(b)' with 'section 102(1)(b)'; and
- in clause 3(3)(aa) by replacing 'section 76(3)' with 'sections 76(2), (2A)'.