



SUBMISSION

Caravan Industry Association Western Australia (Inc)

Provides the following information as a submission to the
Department of Commerce;
Consultation Paper – Regulatory Impact Statement.

STATUTORY REVIEW OF THE RESIDENTIAL PARKS (LONG-STAY TENANTS) ACT 2006



SEPTEMBER 2014

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INTRODUCTION

Response format

The Caravan Industry Association Western Australia (CIAWA) hereby submits its response to the Department of Commerce (DoC) Consultation Paper Regulatory Impact Statement. *STATUTORY REVIEW OF THE RESIDENTIAL PARKS (LONG-STAY TENANTS) ACT 2006* (RPLT) released in June 2014 for public comment.

This submission addresses the Objectives, Options and Issues for Consideration raised in the Consultation Paper as well as each of the 21 sections of the Consultation Paper.

As the peak industry body for the caravan and camping industry in WA, CIAWA represent caravan park owners and operators as well as caravan and camping trade businesses.

Caravan Industry Association Western Australia (Inc) overview

CIAWA aims are to;

- Promote the caravan and camping lifestyle
- Preserve its affordability for all West Australians
- Advocate on behalf of members at Government level
- Form links with industry bodies

CIAWA has 250 members throughout Western Australia. Our membership is comprised of;

- 150 caravan park members spread across every region of WA - from Kununurra to Esperance to Laverton. Of these, 112 are mixed use parks (combining tourist and long stay), 14 are short stay only and 14 are long stay only (residential Parks / lifestyle villages). Our membership includes six multi caravan park ownership and marketing groups (eg Aspen, BIG4 etc).
- Over 100 trade members – manufacturing and retail business associated with the caravan and camping industry (eg suppliers and manufacturers of caravans, campervans, camper trailers, RV's and associated equipment).
- In addition, we have a database of 50,000 qualified caravan/camping consumers.

CIAWA is proactive in representing Members and the industry in general, is represented on Government review bodies and is regularly consulted by Government and industry stakeholders. Core to our advocacy role is providing an industry perspective to Government and where required engaging legal advice and undertaking research and consultant reports to support the industry position.

SUBMISSION CONSULTATION AND INDUSTRY RESEARCH

This response is submitted by CIAWA's Board and Parks Committee following surveys and interviews with members and with the assistance of legal firm Rockwell Olivier and Accounting firm BDO.

CIAWA Board Members;

Craig Kenyon, Chair	Fleetwood Lifestyle Products Pty Ltd
Jacob Chacko	Acclaim Holiday Parks (operating eight caravan Parks around WA)
Frank Delanotte	Merredin Tourist Park and Forrestfield Lifestyle Village
Andrew Fardon	Off Road Equipment / Cub Campers
John Layman	Summerstar P/L (operating four caravan Parks around WA)
Stephen May	Johnno's Camper Trailers
Richard Raven	Fleetwood RV
Craig Robins	BIG4 Peppermint Park, Busselton
Chris Sialtsis	Central and Wanneroo Caravan Parks
Brett Workman	Dometic
George Williams	Parkland RV

CIAWA Parks Committee Members;

Jacob Chacko, Chair	Acclaim Holiday Parks (operating eight caravan Parks around WA)
Laura Cocking	Mandurah Caravan Park
Frank Delanotte	Merredin Tourist Park and Forrestfield Lifestyle Village
Mick Kennedy	Fremantle Village
Stewart Kirkup	Discovery Holiday Parks
John Layman	Summerstar P/L
Dean Massie	Aspen Parks
Craig Robins	BIG4 Peppermint Park, Busselton
John Wood	National Lifestyle Villages
Chris Sialtsis	Central and Wanneroo Caravan Parks
Brett Workman	Dometic

CIAWA members were consulted via a web survey sent to 140 licensed caravan park owners/operators with a response rate of 41% (58 Parks represented by 42 responses). The summary of responses to the survey can be found in Appendix 1. Survey results are incorporated throughout this report in relevant sections.

In addition to the survey responses, park owners representing 42 licensed caravan Parks (CIAWA members) were personally interviewed to obtain direct owner / operator input.

PREVIOUS DISCUSSION PAPER

The DoC Regulatory Impact Statement consultation paper (RIS) identifies that there were 686 tenant responses to the original discussion paper released in August 2012.

Based on figures in the RIS that show there are an estimated 28,466 people residing permanently in caravan parks across Western Australia, this equates to less than 2.5% of residents living in caravan parks and may indicate a lack of concern from residents in general regarding the status quo, especially considering the ample opportunity for and encouragement of responses by tenants.

Feedback from CIAWA Members providing permanent resident accommodation in caravan parks is that the low levels of interest by tenants in this RIS reflect the general sentiment amongst tenants – that they are generally comfortable with the current system. It would appear to be a vocal minority agitating for change.

OVERVIEW OF THE CARAVAN PARK INDUSTRY

Caravan Parks are an important component of Western Australia's affordable accommodation housing component and also operate within the tourism industry, providing a range of accommodation types and other services to meet the needs of a wide cross section of visitors.

The DoC consultation paper refers to information from the Australian Bureau of Statistics (ABS) 2011 census data that identifies that in Western Australia there are 15,432 dwellings in residential Parks with 28,466 people residing in these Parks.

Tourism WA's research summary indicates that in 2010, an estimated 506,600 people stayed in a caravan park in Western Australia, equating to approximately 4,209,100 visitor nights with an average length of stay of 8.3 nights. This represented around 9 per cent of the total number of tourists to the State.

Caravan Parks are well placed to meet market conditions and the very nature of the segment and consumer demands forces operators to change and evolve their business model. Currently this market pressure includes the provision of permanent housing, on a temporary basis.

Caravan Parks retain the ability under the current legislation (Caravan Parks and Camping Ground Act 1995) to change their mix of permanent and short stay (tourist) sites if and as the market in 10, 20 or more years dictates it.

The retention of a sustainable caravan industry in Western Australia is under threat from many areas, including the review by the Department of Local Government and Communities (DOLGC) into the Caravan Park and Camping Ground Act.

These include a proposal to implement inequitable standards for the provision of caravan and camping sites as presented by DOLGC in the draft Nature-Based Parks guidelines, the provision of free or low cost "RV Friendly facilities" by Local Government Authorities, and low cost facilities provided by sporting clubs.

Value of the caravan and camping industry, State and local levels

The current value of the tourism caravan and camping sector in WA is estimated to be over \$200 million annually and when combined with the annual revenue from permanent or long stay residents of over \$110 million, the industry generates significant economic benefits to local communities.

In Western Australia this is predominantly a regional industry – three quarters of licensed park facilities are located outside the Experience Perth tourism region, spreading the benefits of the sector throughout the State.

76% of CIAWA Member survey respondents stated that park operators should have the ability to manage their business as they see fit, and have the ability to meet the market demands and vary numbers of permanent and tourist sites as demand dictates.

A 2012 study into the economic contribution of caravan Parks in Australia (*Caravan, RV & Accommodation Industry of Australia Economic Benefit Report – Commercial Caravan Park to a Local Community, BDO, 2012*) measured the total expenditure by a commercial caravan park in a local community. This report is included as Appendix 2.

This study found that a commercial caravan park makes a significant economic contribution to local government area in which they operate - **for every \$1 of commercial caravan park turnover, \$1.38 of local economic activity is generated by the individual park to the local area.** (Ref 2 p28*). If this multiplier is applied to the total direct expenditure by tourist users and permanent residents of caravan Parks, it **translates to over \$427,800,000 of economic benefit** to the State.

Factors affecting the Caravan Park sector

The State Government is currently reviewing the legislation that dictates the operations of a commercial caravan park in the CPCG Act. It seems clear that this parallel and interrelated legislation review process shows little understanding of the dynamic nature of the industry and widespread industry imperatives. The CPCG review appears to be pushing a short stay tourism agenda on existing caravan parks.

Contradictory to the RPLT review, those involved with the CPCG review fail to recognise or identify that Caravan Parks provide an essential housing option for low income or transient residents. For example, mixed use caravan parks have met a demand for alternative affordable housing for “fly-in fly-out” workers – a demand that the State Government was unable to meet in a timely or affordable manner.

While the RPLT consultation paper identified that in the past 10 years many Caravan Parks converted to workers accommodation, the RPLT failed to recognise that many Caravan Parks continued to provide sites for self-drive tourists and at considerable cost to their own profitability in many cases.

Comparisons in the RPLT consultation paper were not made to those hotel and motel providers, particularly in the North West, who completely booked out their tourist rooms to “fly-in fly-out” workers. A situation that has had a greater impact on the Western Australian tourism industry by way of the major coach companies such as AAT Kings and APT dropping guided holiday tour programs from the Kimberley to Perth because hotels and motels in the Pilbara especially priced those operators out of the market.

Caravan Park operators feel that various State Government policies and current legislative reviews are aligning to force Caravan Parks to become providers of short stay sites only, and that they have in some way been “profiting” from the system and abusing the way it was intended to operate.

Misinformed comments by some in Government about the caravan park business models and the real nature of the services they provide and sectors they service cause concern for caravan park operators as to what the real intentions of the review are and the future of their livelihood.

Caravan Parks as affordable accommodation providers.

The RIS identifies the need to balance the potential costs and benefits of regulatory action. Evidence from caravan park operators shows that Governments attempts to regulate the permanent resident sector with the implementation of the RPLT Act 2006 has itself led to market failure, with many operators simply withdrawing permanent sites from the market.

Government needs to implement a whole of Government approach towards the caravan park industry, if indeed it continues to regulate it. **Government implementation of some of the changes identified as options in this consultation paper and the concurrent CPCG review, runs the risk of fundamentally changing the business model that almost every commercial caravan park relies on – a mix of tourist and permanent sites.**

Based on stakeholder interviews and survey responses by CIAWA Members, shutting down the mixed use parks will reduce affordable housing in Western Australia currently provided by caravan parks. This will be catastrophic for those requiring affordable housing and it will have a major impact on Government – that of having to provide alternative (public) housing options for potentially over 28,000 displaced park residents.

A park home, cabin or caravan is a depreciating asset, regardless of whether it is a \$300,000 park home or a \$2,000 permanent on-site caravan. The caravan park site on which these assets sit are not owned by the tenant / dwelling owner and have no “value” beyond the agreed lease period, yet the site is often represented by the dwelling owner to be part of the resale value.

This often drives unrealistic resale expectations and sets unrealistic purchaser expectations. If a permanent resident wants tenure or greater security by way of longer lease then the simple reality is the resident will have to pay more for it, either a higher purchase price or weekly rates.

If the changes that are listed as options in the RIS are implemented, industry estimates it will add \$150 per week to the cost of a weekly site fee. This cost added to the existing weekly site fee will see the affordability of residing in a caravan park fall out of reach of most typical residents, with the onus of housing supply falling to welfare agencies and the State Government of Western Australia.

Caravan Parks as Residential Communities

Many people choose to live in caravan parks as a lifestyle choice, the feeling of community, neighbours who are in similar circumstances (widowed, single, aged but active) and the safe environment provided in a caravan park is a sought after experience by residents seeking to be part of a community.

The caravan park operator plays a major role in ensuring this environment is maintained for the enjoyment of all residents. Park Managers manage the micro-community that is a caravan park, being the security guard, dispute resolver and making sure new tenants match the existing community.

If not for safeguards in the RPLT such as the Park Manager being able to control who is provided a lease, the permanent resident would be exposed to anyone moving into the caravan park, and that anyone may not be a suitable person to reside in what is a very small community that live in closer proximity in a caravan park than a housing estate.

It is important that the role caravan park operator's play in managing the dynamics is recognised as an important part of providing the very environment residents seek and that management is allowed to manage this accordingly.

4. OBJECTIVES OF THE RESIDENTIAL PARK (LONG-STAY TENANTS) ACT 2006

CIAWA COMMENTS:

The RIS makes the point that housing is a basic human need and acknowledges that demand for accommodation exceeds supply. This is particularly the case for the affordable housing market.

The RIS then expresses concerns that operators could exert their market power by immediate evictions and arbitrary rent increases to the detriment of residents. CIAWA acknowledges the need for some regulatory framework but is concerned that the implementation of excessive regulation in this market will lead operators to reduce the availability of affordable long term stay sites as they increasingly turn away from overly zealous and restrictive requirements. Alternatively operators will make the accommodation less affordable by passing on the cost of the compliance regime on to residents who are residents due to the need for affordable housing.

The comments in response to specific items in the RIS articulate the CIAWA position in regard to what our members consider to be reasonable regulation of a diverse market sector.

It is also important to acknowledge that the "residential park market" consist of a diverse range of business models and site uses ranging from the mixed use tourism and long stay Caravan Park through to the operation of sophisticated residential park home parks targeted at the 45 and over market for affordable accommodation.

The diversity of the market needs to be acknowledged in any regulatory change. What may be a reasonable commercial regulation on a large scale residential park home development, may have such an unreasonable impact on a small mixed use park that the long stay sites in the mixed use park will be lost to the long stay residential market.

The RIS correctly identifies that because the RPLT deals with leasehold not freehold rights the RPLT cannot deliver (and accordingly should not attempt to deliver) complete security of tenure as to do so would fundamentally affect the supply and business modelling underpinning the provision of this form of accommodation.

CIAWA's Member survey shows that while the Government believes it needed to address "Market Failure" by regulating the industry that the opposite has been the case.

57% of survey respondents say that they have reduced the amount of permanent residents due to the onerous requirements of the RPLT Act. A reduction in long stay sites provided by commercial caravan parks will see the burden of providing accommodation for those displaced fall back on the public housing sector and come at a significant cost to Government.

ISSUES NOT ADDRESSED BY THE RPLT ACT:

1. *Provision of more land for development of residential Parks for long stay residents*
2. *Provision of alternative accommodation options for park home residents when a caravan park is sold.*
3. *Zoning of land on which caravan Parks are situated so as to ensure that the land cannot be developed for other purposes.*

CIAWA COMMENTS:

CIAWA supports the proposition that such issues should not be incorporated into the RPLT Act.

To do so would give rise to the potential for unnecessary conflict between the existing planning and development regime and the RPLT Act. All of these aspects of regulation should not be dealt with by the RPLT Act.

Each of the issues identified are more appropriately dealt with within the legislative framework already in place relating to issues such as zoning, development of land and the support of state assisted affordable housing (for persons displaced by the sale of a caravan park).

CIAWA notes however that there are a range of zonings for land which is currently occupied and used for caravan Parks, mixed use Parks and residential Parks.

5. LEGISLATIVE FRAMEWORK

Relevant Acts and Key to Acronyms:

- *Residential Parks (Long-Stay Tenants) Act 2006 (RPLT)*
- *Caravan Parks and Camping Grounds Act 1995 (CPGT)*
- *Residential Tenancies Act 1987 (RTA)*
- *Retirement Villages Act 1987 (RVA)*

CIAWA COMMENTS:

CIAWA acknowledges the need for different legislation to manage and regulate the differing styles of non-freehold accommodation in Western Australia.

Each of the above Acts deals with a different style of accommodation, each giving rise to differing needs of both the resident and owner of the relevant properties. It is not practical to combine regulation of any one of the differing residential uses as they deal with quite different styles of land tenure.

It is important to recognise that in dealing with long stay tenancies in a caravan park or residential park that the actual accommodation units are not fixtures, but moveable park homes. In many cases the moveable home is a chattel owned by the resident, it must be dealt with differently than in any other regulatory environment. This extends not only to the regulation of how it is built, but importantly also as to how the tenure of the site on which it sits is regulated.

6. SCOPE OF TENANCIES COVERED BY THE ACT

ISSUES FOR CONSIDERATION - ISSUE 6.1

Do you agree with the proposal to continue to regulate renters under the RPLT Act? Why or why not?

CIAWA RESPONSE:

CIAWA strongly supports the continued regulation of renters under the RPLT Act.

ISSUES FOR CONSIDERATION - ISSUE 6.2

What is the appropriate regulation of Strata Parks?

CIAWA RESPONSE:

CIAWA recommends that residence in Strata Parks remain regulated under the RPLT. The Strata Titles Act is not concerned with individual tenancy arrangements.

The provisions in the Strata Titles Act which touch on the regulation of common facilities and common property are concerned with rights between owners of the freehold title to the strata lots.

It does not deal with the more complex residence arrangements that arise in a residential park and would be unsuitable in its present form to regulate park home residences and tenancies of any kind.

To suggest that long stay residence in a Park should be regulated within the Strata Titles Act would be as impracticable as asserting that the residential occupation of any Strata Titled home should be regulated under the Strata Titles Act instead of the RTA.

To the extent that it is applicable, the Strata Titles Act does put in place a procedure for dealing with issues relating to contribution to and maintenance of common property within the Strata Plan as between owners of the strata lots. As such any additional regulation within the RPLT at that level is not considered necessary.

To the extent that a long stay tenant occupies a site in a strata park, the tenants' rights will not differ substantially to any other tenant in other styles of park, and can readily be regulated in the same manner through the RPLT.

The excision of Strata Parks from the RPLT would result in a two tier system of regulation and cause confusion for residents who would not necessarily have the sophistication or funds to engage the appropriate advice to understand the difference in the underlying title to the park that they occupy.

In reference to Strata Parks being managed under the RTA. CIAWA recommends that Strata Parks remain regulated under the RPLT.

The RTA does not deal with the more complex residence arrangements that arise in a residential park and would be unsuitable in its present form to regulate park home residences of any kind.

The RTA deals with a tenancy in regard to a building which is a fixture to land as well as the surrounding land (or building) within which it is located. It deals with recognised legal rights pursuant to a residential lease agreement. Park homes and caravans by contrast are moveable. It is primarily the site that is provided to the long stay tenant. The caravan or moveable home may be either the property of the park operator or the property of the tenant.

It would require substantial amendment to the RTA for it to have any relevance to the peculiarities of long-stay site lease arrangements.

The RPLT already provides for a standard terms of long stay agreements in Schedule 1 of the RPLT and specifically considers both styles of agreement namely site only and site and caravan/onsite home.

7. LIFESTYLE VILLAGES

Should similar protections in relation to security of tenure to those set out in the Retirement Villages Act 1992 (WA) be included in the RPLT Act?

CIAWA RESPONSE:

It needs to be understood by those conducting the two reviews into the industry that the term “Lifestyle Village” is a marketing description developed by a company who provides one style of facility within the sector. The facility is still a Caravan Park, just one that currently provides only permanent sites. What meets the needs of today’s market, providing only permanent resident sites, may not in 50 years’ time and it is this ability of a Caravan Park to adapt over time that makes it unique. This ability should not be removed.

CIAWA acknowledges that there is a difference between Park Home Parks and mixed use Caravan Parks however it is CIAWA’s position that there should be no change in how Park Home Parks are defined. 70% of respondents to CIAWA’s Member survey said these Parks should remain under the broader definition and use the flexibility of the Caravan Park definition.

At present there are a variety of zonings and permitted land use classifications for land currently used for long stay Parks and lifestyle villages. This range of zonings would not allow for the same security of tenure that Retirement Villages provide.

Park Home Parks were originally designated to operate under the RTA. The RTA offers the operator far greater discretion and control than the RPLT does but operators of Park Home Parks believe it benefits residents to come under the RPLT legislation.

It is important to recognise that the residential density of a lifestyle village and long stay park is much higher than would be permitted if these sites were classified as a normal residential subdivision. Any change to this state of affairs would seriously damage the commercial viability of a long stay park/lifestyle village.

If Government believes it needs to manipulate definitions and rearrange various Act jurisdictions, care will need to be taken. Any amendments must continue to recognise the portable nature of the residences (they are moveable chattels not fixtures) that are the subject of a long stay site.

If the RPLT were amended to treat long stay park residences as if they were of a permanent and fixed nature there is a potential risk that both current and future developments may be unviable as the development models would then not comply with the relevant zoning requirements as to the density of the development and building requirements. Alternatively by treating long stay park residences as normal houses they will be more expensive to develop and maintain, and necessarily will be less affordable.

The consequence of such an outcome would be a reduction in this style of affordable housing in the market.

8. CONTRACTING OUT OF THE ACT

8.1 VARYING THE REQUIREMENTS OF THE ACT

It is proposed that the RPLT Act be amended, consistent with the recent changes to the Residential Tenancies Act, to prohibit any form of contracting out of the Act, including the requirement that

Park operators bear the costs of preparing the long-stay agreement. This would preserve the fundamental rights and obligations set out in the RPLT Act, while permitting the parties to negotiate and agree in relation to other aspects of their lease agreements.

CIAWA RESPONSE:

CIAWA does not support the prohibition on contracting out of the standard terms of a long stay agreement in the form provided in Schedule 1 to the RPLT.

The items that can be contracted out at present are articulated in the RIS at 8.1. The capacity to exercise a right to agree exemptions recognise the required flexibility to deal with the diverse range of site conditions that exist.

If any limit is to be placed on contracting out consideration should be given to having different rules for 100% park homes/lifestyle villages to those that would apply to a mixed use caravan park, where the interests of tourists as well as longer stay residents needs to be accommodated in the overall management of the park.

Any variation from the standard lease could be incorporated into a standard disclosure document prior to entering into the site license agreement.

8.2 CONTRACT PROVISIONS PREVENTING THE REGISTRATION OF A LEASE OR A CAVEAT

A possible way to address this issue would be to amend the RPLT Act to provide that lease provisions preventing a tenant from registering a lease or lodging a caveat are void.

CIAWA RESPONSE:

CIAWA does not support the proposition that residents should be entitled to register a caveat over the title to the land on which the site is located.

An owner should be able to contract out of any right a resident may otherwise have to register a caveat.

Registration of a caveat by any resident would create significant practical issues for a registered proprietor who wanted to deal in any way with the title of its property.

In the event of a sale all of the caveats which are absolute caveats would need to be withdrawn and then re-lodged at settlement to enable the incoming buyer to register a transfer of the land and any mortgages required to finance the purchase.

Even if the caveats are expressed simply to be subject to the claim of the resident, many financiers will still require such caveats to be removed prior to settlement as a condition of granting finance.

The current Landgate registration fee for withdrawing a caveat is \$160.00. The same fee of \$160 applies for registration of a caveat.

To trigger this fee, it does not even require the sale of a business, simply refinancing or changing financial institutions could require the withdrawing and reapplication of a caveat, for each and every caveat in place. If the right to provide contractually either to prevent a caveat being registered, or at least to pass on the cost of removal of the caveat to the resident, the operator would be the one required to pay this amount.

In a larger park home, where there may be more than 100 sites with long stay agreements, the impact of selling or just refinancing would incur around \$32,000 in registration fees alone if all caveats had to be withdrawn and re-lodged. Legal costs for the preparation of withdrawal of caveats and new caveats would potentially add at least a further \$600 per transaction, resulting in around \$60,000 of additional costs in total. Park operators would also incur substantial additional conveyancing costs in dealing with the removal of caveats at a settlement.

There is also the added difficulty imposed if a site resident does not remove the caveat when they leave. Where a caveat is not removed, and the caveator can no longer be contacted or the caveator unreasonably refuses to withdraw the caveat the registered proprietor must resort to the provisions of the Transfer of Land Act (TLA) to have the caveat removed. The process requires the issue of a notice through Landgate to the caveator requiring the caveator to justify the caveat by application to the Supreme Court within 14 days of the issue of the notice.

The notice is issued pursuant to section 141A of the TLA. The cost of issuing the notice is \$160 in Landgate fees and solicitors costs which will be up to \$1,000. If the caveator applies to the Court to contest the removal of the caveat there is a substantial delay in any dealing the owner may wish to process as well as the substantial costs of the Court proceedings.

To avoid the need for costly court applications a common contractual provision included in commercial leases is to appoint the registered proprietor of a property as the attorney of the tenant for the limited purpose of signing a withdrawal of caveat where a caveator wrongfully refuses, or cannot be located, to do so.

100% of CIAWA Member survey respondents do not support granting residents the ability to lodge a caveat.

8.3 UNILATERAL VARIATION OF A CONTRACT

It may be necessary to strengthen the operation of the unilateral variation clause and clarify its interaction with the ability of the park operator to vary the park rules.

It may also be appropriate to include a provision in the Act giving the SAT the specific power to make an order varying an agreement. The powers of the SAT are discussed further at part 20.2 of this paper.

CIAWA RESPONSE:

CIAWA does not support limitation being placed on a park operator's capacity to create rules for the common benefit of all park users.

It is a matter of contract law that the terms of the residence agreement cannot be varied other than by agreement of the resident and the owner. No further regulation of this basic legal principal is required.

If a resident has a fixed term agreement then the terms cannot be changed during that term. If the resident has only a month to month tenancy then the situation is no different to any other tenancy arrangement where either party can nominate that they want to negotiate a change in the terms, and if no agreement is reached then the agreement will come to an end.

The RPLT provides for a minimum notice period for termination if this was to occur. The role of the SAT should be limited in such circumstances to reviewing whether the process for termination has been properly followed.

Park Rules are not designed to change anything contained in the residence agreement. The Park Rules are to regulate the interaction of residents in the common area and regulate how the use of their site impacts on the adjoining and surrounding park users.

CIAWA does not support restrictions being placed on the capacity of Park operators to set park rules suitable to their circumstances provided that such rules do not take away any rights that a resident may have under the agreement or the RPLT.

8.4 ROLLING SHORT-TERM CONTRACTS

It is proposed that the RPLT Act be amended so that it applies from day one to all tenancies entered into for non-holiday purposes, subject to some exceptions.

A clear set of exclusions from the operation of the Act would be included. The types of agreements that would be excluded from the RPLT Act could include:

- *occupation of a residential site for holiday purposes;*
- *occupation of a residential site by an itinerant worker, unless parties agree otherwise;*
- *occupation in a residential park by an employee of the operator;*
- *places established for retired persons under the Retirement Villages Act;*
- *a place owned or managed by a co-operative;*
- *a place owned by a company title corporation occupied by a shareholder of the corporation; and*
- *any other place or arrangements prescribed by the regulations.*

This proposal seeks to extend the statutory safeguards of the RPLT Act to all non-holiday leases in a residential park, regardless of the lease term, but provide operators with enough flexibility to continue offering short-term tenancies.

In the case of lease arrangements for easily relocatable dwellings (such as caravans) in mixed-use Parks, the Act could provide both parties with the ability to agree on an initial 'trial' period.

Provisions would be included to make sure that both parties understand the implications of entering into a short-term arrangement – in some jurisdictions, the tenant must sign a specified form acknowledging that they understand the short-term nature of the lease.

CIAWA RESPONSE:

CIAWA does not support the proposed changes.

As an introductory comment on this recommendation, the extension of the application of the RPLT in the manner suggested would substantially aggravate the problems that were highlighted above in regard to permitting residents to lodge caveats over titles. It would also add on a further layer of complexity in trying to determine into what category a resident should be classed.

To define long stay in any manner other than the length of stay will simply open up a further range of "loopholes" as residents and owners alike endeavour to determine whether they are or are not covered by an exemption.

The exemptions themselves would require further definition of terms such as "non-holiday", "itinerant worker", "managed by a Co-operative" etc. the concepts of "holiday" and "itinerant" by their nature would in any event require some reference to either the length of stay and possibly the intention of the resident in regard to the purpose of the stay. It is an added level of complexity that simply is not required.

Rather than becoming more prescriptive, CIAWA would support the introduction of a right to enter into more flexible tenancy arrangements. It is the case that many residents do not want to enter into long term residence agreements. 100% of CIAWA Member survey respondents want to retain the ability to provide periodic leases.

The primary area of concern arises from the genuine long term residents who choose to live in lifestyle village park homes which are specifically marketed as an alternative to traditional forms of rental or home ownership.

Consideration should be given to differentiating within the RPLT between the extent of regulation on Park Home Park and the regulation on smaller mixed use facilities. This is due to the different standards of residence and the differing business model of the Park Home Park.

9. DISCLOSURE

9.1 WHAT INFORMATION SHOULD BE PROVIDED TO A TENANT?

It is proposed that the RPLT Act and regulations be amended to strengthen and improve disclosure requirements.

Disclosure documents will be revised and updated to ensure that the crucial elements of the agreement are brought to the attention of the prospective long-stay tenant before they enter into a long-stay agreement. It is proposed that the current prescribed Information Sheet will be renamed a 'Disclosure Statement' and expanded to include a clear summary of the key provision of the lease and some additional disclosures.

PLEASE NOTE: Legal advice provided to CIAWA advises that many of the options listed for disclosure which relate to personal financial information of an owner and resident may be regulated under the Australian Privacy Act depending on various factors set out in that Act and while CIAWA provides a response the Department should clarify the legality of options raised in the discussion paper.

CIAWA RESPONSE:

The Department of Commerce states on page 37 *"The Department is of the view that greater disclosure is justified"*.

Park operators believe that tenants should be required to seek independent advice from a third party that confirms the tenant understands what they are entering into when buying a park home or entering a lease.

69% of respondents to CIAWA's Member survey stated that independent advice is required. There should be a standard form which the incoming tenant and independent adviser signs confirming they have sought and received independent advice which can be kept with the tenants file.

Disclosure is currently provided at a level anyone can and should be able to make an informed decision on when making a major purchase or lifestyle choice. The onus has to be on the permanent resident, not the park operator when it comes to awareness of the implications of the agreement, simply stating that "a lease agreement is too lengthy and complex" does not mean it can or should be made simpler.

Any disclosure document must take account of the diverse nature of caravan parks and residential parks where long-stay residential accommodation is provided. It may be difficult to provide a one size fits all solution.

CIAWA supports the inclusion of basic disclosure of such issues as are articulated on page 40 of the RIS regarding key terms of the residence agreement. The additional disclosures suggested on page 41 however in some cases would put a more onerous disclosure obligation on the park operator than would be imposed on the owner of a normal freehold residence under the RTA.

Specific objection is taken to the suggestion that the disclosure should extend to such matters as:

- **Representations:** The Australian Consumer Law provides statutory protection for any deceptive or misleading conduct by a consumer party to an agreement. If a resident considers an aspect of discussions such as security devices to be essential to their agreement they should negotiate for it to be in the contract. Adding them to a disclosure document does not provide them with a contractual right to enforce such a representation. To include such matters in a disclosure notice confuses the contract with the disclosure. The correct place for any obligation to provide a service or facility is in the contract not the disclosure notice.

- Development, redevelopment or sale: The RTA does not require such disclosures. If the residence agreement is for a fixed term that will in itself protect a resident. If the resident does not want to enter into a long term agreement then the resident takes the same risk as a residential tenant of a freehold property that at the end of the term they may be given notice to vacate.
- Park Owners tenure and Financial Arrangements: The RTA does not require such disclosures. A requirement to disclose financial information would need to impose a reciprocal obligation on the resident not to disclose such information to third parties, an obligation that would be difficult if not impossible to police. Enforcement of such nondisclosure would be unworkable.

In regard to the more complex park home parks / lifestyle village agreements, the disclosure should contain a direction that residents should obtain their own independent legal advice before executing the agreement.

85% of CIAWA Member survey respondents do not support greater levels of disclosure and 73% stated that a tenant had an equal obligation to provide disclosure when their position changes, such as becoming unemployed, a change to benefit support or other change that may impact on their ability to pay their site fee.

9.2 WHEN SHOULD DISCLOSURE DOCUMENTATION BE PROVIDED?

To ensure that tenants are provided with an appropriate timeframe to review and consider the lease and disclosure documents before they sign the lease, should minimum timeframes be specified for providing disclosure material?

CIAWA RESPONSE:

The practical problem to be addressed with disclosure is at what point does a resident enter into a long stay agreement. Whilst this may not be an issue for Park Home Parks where most of not all of the agreements entered into are for long-stay agreements, it may be less clear for mixed use Parks where sites may be used variously for short and long stay residence. Residents may only commit to an initial stay of one or 2 months then stay on beyond the deeming date of 90 days, by which time any disclosure would be redundant.

To make such a provision administratively enforceable the requirement for disclosure would have to extend to all site agreements that were not strictly for a short stay holiday, and would have to include a clear statement setting out the circumstances where a short stay agreement may roll over to a long-stay. The disclosure would also be required to be given even where the resident refuses to sign any form of residence agreement.

As the current RPLT provides for statutory penalties for non-disclosure it is fundamental that a clear and enforceable regime be put in place if disclosures are to be effective. In this context it is again observed that some of the additional disclosures contemplated by the RIS are not easily assessable such as future development plans and financial arrangements which might "potentially impact on the tenant". The use of subjective language in such disclosure requirements would make enforcement problematic if not impossible.

From a legislative drafting position, any requirement for disclosure should be limited to objective relevant facts and key terms of the agreement. From a policy perspective the disclosure should not be any more onerous than disclosure requirements under the RTA.

CIAWA supports the setting of a standard time frame for disclosure for Park Home Parks and agreements where the parties agree at the time of entering into the agreement that it is to be a long-stay agreement.

From a practical perspective the issue of delay in the agreement commencing (which would be an issue where a resident insists on moving in straight away) may be alleviated if a provision for a similar cooling off period where a resident enters into an agreement without the required period of prior disclosure.

Provisions similar in nature to section 69D of the Strata Titles Act could be incorporated to give a resident a right to terminate the residence agreement if inadequate or no disclosure is given before the contract, or if subsequent disclosure materially prejudices the resident.

9.3 SHOULD ONGOING DISCLOSURE BE REQUIRED?

In some instances, after a lease agreement has been entered into, a park operator may become aware of a change in circumstances that could impact on a tenant's occupation. This would be of particular significance in relation to tenancies of a long duration. Changed circumstances might also arise at the time of a lease renewal.

Should the park operator should be required to inform a tenant about these changes so the tenant is provided with information relevant to the security of their ongoing tenancy?

CIAWA RESPONSE:

85% of respondents to the CIAWA Member survey said that no more disclosure obligations should be imposed on the park operator. As detailed above the disclosure could incorporate a prominent notice that residents should obtain independent legal advice before entering into the agreement.

Both Tenancy WA and Shelter WA are community services that will give advice where a resident is not able to or does not want to engage a private solicitor for this advice.

In terms of ongoing obligations, there is no objection to fresh disclosure of key terms of the agreement if it is varied at the end of a fixed term. Such variations in any event are a fresh contract that would require the agreement of both parties without any statutory requirement for this.

As set out above CIAWA does not support any requirement for extended financial disclosure by the Park operator. If this option were to be implemented, CIAWA would ask what other lease arrangements would then be forced to provide financial disclosure. Would the Western Australian Government make commercial leases such as in shopping centres or private landlords who provide a Residential Tenant lease do so?

9.4 CONSEQUENCES OF INADEQUATE DISCLOSURE

How to avoid the potential for a tenant to be misled and suffer loss or damage if a park operator fails to provide the relevant disclosure documents or provides information that is incorrect or misleading.

CIAWA RESPONSE:

CIAWA Members have raised the question of why nothing in the RIS identifies the problem of a tenant giving untruthful information prior to securing a lease.

Many park operators have been misled by tenants and have suffered loss and damage as a result of misleading or untrue information from a tenant. This issue identifies the biased and unbalanced nature of many parts of this RIS document.

The SAT already has a broad power in section 62(4)(k) to make such other orders as the tribunal considers appropriate.

The three suggested changes all misconceive the purpose of the disclosure document.

In effect the proposal is to make the agreement subordinate to the disclosure and enables a resident to abrogate their obligation to inform themselves as to the contract they are entering into.

The provision of a clear direction for the resident to obtain independent legal advice should be sufficient to alert them to the need to read not only the disclosure but also the agreement. To take any other approach will require the disclosure document to be as detailed as the agreement itself, thereby defeating the purpose of trying to highlight particular obligations in the agreement

In regard to misleading terms, the suggestion above of a cooling off period and provisions for termination of the agreement similar to the sale of strata title property provisions of s69D of the Strata Titles Act would accommodate this concern.

The RPLT already has provision in section 18 for a cooling off period for site only agreements which could be modified to provide the required protection to the resident.

Any provisions added to the RPLT should not be dependent on subjective assessments. i.e. if a right to rescind is included it should not depend on determining if "the tenant would not have entered into the agreement". It should be confined to where objective facts can be tested such as whether a required fact or term of the agreement has not been disclosed, and whether the resident has decided to terminate the agreement within a fixed period of time after the resident is informed of the failure to disclose. (again in similar form to the Strata Titles Act provisions).

No additional powers need to be added to s62 of the RPLT as there is already sufficient powers delegated to the SAT to deal with non-disclosure.

10. FACTORS AFFECTING SECURITY OF TENURE

10.1 MANDATING MINIMUM LEASE PERIODS

How to ensure that the tenants' security of tenure is adequately protected, while ensuring that park operators are not subject to unnecessary restrictions in relation to the types of tenancies that they are able to offer.

CIAWA RESPONSE:

CIAWA supports Option A, no change to the status quo.

Option B is in effect a defacto imposition of a minimum term as it contemplates the imposition of a compensation payment for termination of a long term agreement in less than five years.

If a resident does not want to enter into a five year agreement there is no contractual basis for the RPLT to impose a compensation regime which is outside the contemplation of the parties to the agreement.

The rationale for the five year deeming provisions in commercial tenancy legislation is that a retail shop derives its goodwill from the location of the shop, and accordingly that needs some form of statutory protection. The statutory protection comes in the form of a statutory option to renew a short term for an additional period to make it a 5 year lease.

A long stay site in a caravan park does not have the same commercial context as if the site and home (or caravan) are both leased as a residence, then the site is only a more transient form of residential tenancy.

If the resident owns the home (or caravan) then they are moveable chattels and can be relocated in the event of a termination and will still be a home. It is not appropriate to use the retail shop analogy when considering issues of fixed minimum terms.

The preferred method for regulation of the term of a site agreement is to consider differentiated notice periods, but without any obligation for compensation.

Note that under the existing disclosure regime section 62 RPLT already provides for SAT to order compensation if there is a failure to disclose or a breach of the agreement or the Act by a park operator.

The proposed changes would place a resident in a long stay site in a superior position in regard to security of tenure to a tenant under the RTA.

100% of respondents to the CIAWA Member survey were against granting tenure to permanent residents and 64% support no minimum lease period.

10.2 TERMINATION OF TENANCY 'WITHOUT GROUNDS'

Should 'without grounds' termination of periodic tenancies should be retained?

CIAWA RESPONSE:

The potential benefits noted in this part of the RIS highlights that park operators have "annual licenses".

Without a license the operator cannot continue to provide the sites for long term residence. From a strictly legal perspective all long stay agreements should be deemed under the RPLT to be only for so long as the operator holds a license. This element alone should be persuasive that termination without grounds should be retained.

Any reduction in flexibility of termination would also be a substantial fetter in the owners' rights to determine the best use of its property.

Zoning of land used for caravan parks varies with 51% or less actually zoned Caravan Park. Other zonings include tourist use, mixed use, special use, and in some cases residential. Accordingly the land may be used for uses other than a caravan park in almost half of all land currently used for caravan parks.

Changes to the RPLT would give rise to potential compensation claims by owners on the basis that such amendments would have the effect of reducing their proprietary rights.

CIAWA considers the retention of the 180 day notice as non-negotiable where there is no fixed term residence agreement in place.

While the RIS states that many tenants expect to live out their lifetime in the Park, this simply identifies the mis-informed residents who have purchased park homes or on-site caravans when the current disclosure document clearly states that they do not have this right.

88% of CIAWA Member survey responses indicted that they would cease offering long stay accommodation within their parks if this option is adopted. The substantial reduction in affordable housing options would see many residents have to be accommodated by State housing.

CIAWA maintains that such situations as identified in Option C are adequately dealt with under the current notice provisions. s46 provides for compensation if a fixed term tenancy is terminated (even though it cannot be terminated without grounds prior to the expiry of the term.)

10.3 TERMINATION OF TENANCY ON THE SALE OF THE PARK (WHERE VACANT POSSESSION IS REQUIRED)

Whether the right of a park operator to terminate a tenancy on the sale of a park should be retained.

CIAWA RESPONSE:

Termination of a tenancy on sale of a site should only be applicable if the incoming buyer is not going to continue on with the business of a residential park.

In such circumstances the legal position of residents with a fixed term agreement would normally be that they have a contractual right to reside to the end of that term. The current section 41 however enables termination even of fixed term tenancies, but provides recognition of the fact that it is removing a contractual right by section 46 providing for compensation to holders of a fixed term tenancy to be paid.

For anyone else who does not have a fixed term their normal contractual position is different as is their position under the RPLT, namely the termination does not trigger a right to compensation. They would be subject to the notice without reason provisions for a 180 day notice in any event even if the sale of the park did not trigger a termination.

The park residents in either case who own the onsite accommodation would have the opportunity to relocate their home in any event.

To change the rules to take away the operators ability to bring agreements to an end would be inconsistent with the nature of the contractual arrangements, and also be in conflict with the other provisions of the RPLT allowing termination on notice of non-fixed term agreements.

The current RPLT provisions reflect the correct differentiation between the contractual rights of a fixed term tenant and a tenant on an ongoing month to month agreement.

A total of eight comments were made in the CIAWA Member survey that in the case of a Breach of Fixed Term Tenancy compensation should be applicable, including to the operator for a tenant breach.

The extension for an increase to 364 days for the notice period to residents in the event of the sale of a Park was also supported.

10.4 IMPACT OF PARK OWNER INSOLVENCY - MORTGAGEE POSSESSION

Whether tenancies under the RPLT *Act should terminate when a mortgagee enters into possession.*

CIAWA RESPONSE:

CIAWA recommends no change to these provisions. The RIS identifies that an objective of issue 10.4 is “To ensure that tenant’s *security of tenure* is protected”. This is a fundamental flaw in the objective of issue 10.4, park residents have no tenure, there is also no eligibility of compensation as long as the mortgagee acts within the RPLT.

As identified previously, leases that were issued in a term longer than the license period would be in breach of regulations if a park operated without the license, which there is no guarantee the mortgagee would apply for and would mean all residents would be required to vacate the park.

Any change to this provision would have significant impact on a banks capacity to deal with the asset. It is envisaged that such restriction could not be imposed retrospectively in any event as it would have a significant impact on existing financing arrangements for park operators.

A direct consequence of changing the saleability of an asset by fettering the banks capacity to manage the property would be a drop in bank valuations of parks. This would have the potential to place some borrowers in default of their finance lending covenants due to the subsequent shift in debt to equity ratios that a devaluation would cause.

The change would reduce the availability of finance to park operators and any future development of new park home or mixed parks.

10.5 RECOGNITION OF A TENANT

There may be a situation where a long-stay tenant and another person, for example a relative or de facto partner, reside together, but only the long-stay tenant is named on the lease document. If the long-stay tenant leaves or dies, then the other person could potentially be asked to leave the leased premises if the park operator does not recognise their occupation.

How can regulations provide for recognition of persons as tenants in appropriate circumstances?

CIAWA RESPONSE:

CIAWA opposes any change to the RPLT provisions regarding residents who are not the tenant.

The comparison to the RTA is not appropriate. The situation of residents living in a community of a park is not comparable to that of a normal residential tenancy. Park operators need to be able to maintain control over who resides in the Park.

100% of respondents to the CIAWA Member survey believe a park operator should retain all rights to determine who and under what lease conditions a resident can lease a site in the park, this option would not allow an operator to do so.

Any perceived risk of this kind should be dealt with by the disclosure notice specifying that only the person named on the contract has the right to the site, and if they want to have survivorship rights then all residents need to be on the site lease agreement.

It is a matter best dealt with in the agreement rather than leaving it to the discretion of the SAT.

This issue also raises the question of how to identify the legal owner of a dwelling on a long term site. Many park homes are in fact nothing more than a caravan with an annexe, there is no “Bill of Sale” or identifying license for the majority of dwellings on a long term site and proving ownership can be difficult.

11. COMPENSATION

11.1 DETERMINING COMPENSATION – FIXED TERM TENANCIES

Should additional factors be taken into account in determining compensation, to ensure that adequate compensation for loss incurred by tenants is payable in those circumstances where a tenant is entitled to compensation?

CIAWA RESPONSE:

The current provisions of the RPLT make fair provision for compensation of a resident when their contractual rights to a fixed term tenancy is interfered with by early termination.

The rationale for compensation is soundly based in that the resident is being deprived of an otherwise enforceable contractual right to continue to reside for the balance of the fixed term. By making provision for compensation for the loss of that right an appropriate balance is struck between maintaining the commercial flexibility of management for the owner, but providing for compensation for the removal of the right.

As for Option B, The range of compensable matters should not be extended.

A purchase of a park home by a resident and then entering into a site agreement is a reasoned decision by the resident to make that acquisition notwithstanding that it provides a less secure residential tenure to buying a freehold home. It is a necessarily cheaper option which comes with equally lesser rights and certainty of tenure.

With the disclosure contemplated by the RPLT, a resident who would be clear that they are not buying a site forever, and they must contemplate that at some time they may be required to move their site home to another site.

Of the suggested potential additional factors the following observations are made:

1. The length of time a tenant has been in occupation has no bearing on a residents rights. The residents right that is being compromised is not how long they have been there, but how much of the balance of the term is taken away. In the context of assessment of damages for breach of contract an additional head of damage would be the difference in rental cost for the balance of the term, however where the new site is less expensive there would be no loss. In determining compensation it should be limited to measurable amounts, and not extend to some arbitrary assessment.
2. The value of improvements. Improvements to a site home is of no value to the park operator if it does not own the site home. Any improvements made to the site itself are discretionary expenditure by a resident which should not be imposed on the park operator when a site agreement is terminated.
3. Loss if site home cannot be relocated. This is not a commercial risk of the park operator. The site home owned by the resident is at all times at the risk of the resident. To add this to the list of compensable items would make the park operator responsible for loss of an asset it does not own.

It is inappropriate to impose a compensation obligation on a party where they have no control over the matters being compensated. Of the three issues above the only element which has a sound legal basis for claiming as damages is the differential in rent between a new residential agreement and the agreement that was terminated.

This is a measurable loss if the rent for the new agreement is greater than the rent for the terminated agreement and would be recoverable in any event in a breach of contract action.

57% of respondents to the CIAWA survey responded that they had reduced the number of permanent sites due to the existing levels of regulation of compensation. The imposition of an expanded compensation regime will add to that trend.

78% of respondents to the CIAWA Member survey responded that there should be no compensation paid to anyone unless;

- If the operator broke any clauses in the tenancy or leased arrangement. This allows the tenant to accept the agreement before it begins, or elect to take their business elsewhere. As long as the compensation is known beforehand the operator will be able to make informed decisions, but will have the ability to end an agreement if the need arises by paying compensation.
- Relocation, and if the park closes down
- For tenant improvements provided the improvements were agreed to before being built
- A total of eight comments were made that in the case of a Breach of Fixed Term Tenancy compensation should be applicable, *including to the operator for a tenant breach*.

For the reasons outlined above the compensation provisions should be limited to fixed term tenancies that are terminated early. They should not extend to long term leases in general, as to do so is to direct compensation where there is no corresponding legal right being taken away.

A resident pays far less to get into a site home than a normal house, and does so because the tenure is not as secure as buying a property which has a freehold title.

The authority for SAT to determine broadly compensation is not supported. To do so would introduce uncertainty to the market as to exposure of the park operator to compensation cost.

11.2 COMPENSATION ON TERMINATION OF A PERIODIC TENANCY

Tenants on periodic leases have less certainty about how long they will be living in the park and will have sole responsibility for all their relocation costs should their lease be terminated by the park operator, although the RPLT Act does provide for longer notice periods than other types of tenancy.

Should there be a payment of compensation on the termination of a periodic tenancy and if so what factors should be taken into account?

CIAWA RESPONSE:

CIAWA supports no legislative change on this issue. It is logical that where there has been no legal right taken away, there should not be any right to compensation. By definition compensation contemplates that there is something to be compensated for.

The speculative benefits identified in Option B would not eventuate. The responses to the CIAWA Member survey clearly indicated that park operators would not offer more fixed term agreements if these changes were made. It would have the opposite effect of causing operators to reduce the number of sites offered for long-stay use.

Expanding the right to compensation to all long stay residents would have two effects based on the CIAWA Member survey responses.

Firstly there would be a reduction in the number of caravan sites available for long stay residents, and secondly the sites that are retained will be more expensive due to the need to allow for the potential financial risk of payment of compensation in the event of termination of the agreement.

CIAWA has identified that over 25% of all agreements are periodic not fixed. This provides both resident and operator with flexibility. There is no long term contractual commitment by either the resident or the operator, and nothing to be compensated for if either terminates the periodic agreement.

Setting a time period is totally arbitrary and totally uncommercial. Except in the case of claims at common law for adverse possession there are no other provisions that create a compensable right purely based on the length of tenure. The Planning and Development Act 2005 in fact prohibits the creation of leasehold interests of greater than 20 years of part of a lot unless the Planning Commission's approval is obtained.

The introduction of a time qualification period is opposed for all of the reasons articulated in the RIP as being potential disadvantages. CIAWA survey results suggest that the disadvantages are not just potential but will eventuate if this change were implemented.

It should be noted that the only compensation available to a park operator under an agreement where a resident abandons the site is set out in section 47.

The right is no more than a statement of the park operator's contractual remedy against the resident. Division 6 of the RPLT places the burden of disposing of abandoned goods (which may include derelict vans or structures) on the park owner.

11.3 COMPENSATION AT THE END OF A FIXED TERM TENANCY

Currently there is no right to compensation under the RPLT Act when a fixed-term lease expires and the tenant does not have an option to renew the lease. Tenants on fixed-term leases have no certainty with regards to the extension of their lease at the end of the term and will have sole responsibility for relocation costs.

In appropriate circumstances should there be payment of compensation to tenants for relocation costs?

CIAWA RESPONSE:

Long term fixed tenancies of any nature do not have a guarantee at their end for an extension. It is by definition a fixed term. If a resident wants permanent tenure then they need to purchase a freehold title. There is no legal basis to impose an obligation to compensate the resident where a tenancy expires.

Comparable situation exists in regard to long term leases of crown land such as the Hillarys Boat harbour apartments which are on 99 year sub-leases of conditional title lots. At the end of these leases there is no provision to compensate the tenants for the fact that they have to vacate the premises or negotiate a new lease with the sublessor. There are no residual rights to compensation in such leases, and the tenant in that case does not even have the option of relocating the premises notwithstanding that they may have paid in excess of \$800,000 for the right to reside in the apartment for the balance of the term.

Similarly under the RTA there is no provision to compensate a residential tenant for the termination of their lease irrespective of how long they have been resident in the property.

It would be inconsistent to grant under the RPLT rights to a park home park resident that exceeded the rights of an ordinary residential tenant.

There is no evidence of a need for the change identified in Option B.

Commercial Tenancy (Retail Shops) Agreements Act 1985 makes provision for a tenant to require the lessor to give notice of the lessors intentions in regard to the extension of a lease where there is no option to renew.

The relevant provision is section 13B of the Commercial Tenancy Act:

13B. Lease without option to renew etc., parties' rights under;

1. Where a retail shop lease does not provide, whether directly or by operation of section 13, an option or a further option of renewal of the lease and the tenant, within 12 months before the expiry of the lease, in writing requests from the landlord a statement of the intentions of the landlord as to renewal or further renewal of the lease, the landlord shall within 30 days after receiving the request.

(a) give a statement in writing of his intentions to the tenant; and

(b) subject to subsection (2), where he intends to offer a renewal or further renewal of the lease, specify in that statement the terms and conditions proposed.

2. A landlord who gives a statement under subsection (1) is not required to specify the rent proposed to be charged until 3 months before the expiry of the lease.

3. Where there is a period after the expiry of the 30 days referred to in subsection (1) during which the landlord fails to comply with subsection (1)(a) and (b) or (2), the expiry of the term of the lease is deemed to be extended by a period equal to that period of noncompliance.

4A. A lease may be terminated during a period by which it is deemed to be extended under subsection (3) by the tenant giving written notice of termination of the lease to the landlord specifying a day that is;

(a) on or after the date on which the term of the lease ends; and

(b) before the date until which the lease is deemed to be extended under subsection (3).

4B. If the tenant gives the landlord a notice of termination under subsection (4A), the lease terminates on the day specified in the notice.

4C. If a lease is renewed because of subsection (3) after the term of the lease ends, the lease for the further term commences on the expiry of the previous lease, disregarding for this purpose any period during which that lease is deemed to be extended because of that subsection.

4D. A landlord is bound by an offer made by him under subsection (1) to renew or further renew the lease if the tenant, within 30 days after receiving the offer, gives to the landlord notice in writing of acceptance of the offer on the terms and conditions proposed by the landlord.

5. A proposal as to rent to be charged which is submitted to the tenant after he has been given a statement under subsection (1) is to be taken to be an offer for the purposes of subsection (4).

In effect it creates a statutory extension of the tenancy until the landlord addresses the issue of whether the lease is to be extended.

A similar provision adapted for the RPLT would give greater certainty to both park operator and resident than simply providing for 180 notice of termination.

11.4 COMPENSATION ON RELOCATION WITHIN A PARK

Currently the RPLT Act does not specifically provide for payment of compensation if a tenant is required by the park operator to relocate to another site within the park. This issue is addressed through use of prescribed clauses in long-stay agreements.

How to provide a clear right to payment of compensation for tenants in relation to costs of relocation within a park.

CIAWA RESPONSE:

CIAWA supports there being no legislative change. Current industry practice is that a park operator who requires a long stay resident to move from one site to another is to pay the reasonable cost of relocation. The park operator undertakes responsibility for the relocation.

If a tenancy is a fixed term tenancy then there would be a contractual and commercial argument for compensation. If however a tenancy is only casual (irrespective of how long it had continued for) there is no basis to argue for compensation for relocation within a park. To do so would be inconsistent with the position that a resident should not be compensated for the termination of a casual residence agreement.

A relocation is in most respects simply a different form of termination of an existing agreement and the entering into of a new agreement.

No provision for compensation should be added to the RPLT. It should remain a matter of the contractual relationship between the parties and this is supported with 78% of CIAWA Member survey respondents stating that no compensation should be paid.

12 DEATH OF A TENANT – LIABILITY OF TENANT’S ESTATE

12.1 RENTERS

An issue identified in the discussion paper concerns the potential liability of a sole tenant’s estate for the unexpired term of the lease when the tenant dies. The RPLT Act does not directly address this issue.

This issue is of more significance in relation to site agreements with home owners, as the dwelling needs to be sold or removed before a park operator is able to re-let the site, whereas it is a simpler process to terminate a tenancy agreement with a renter and re-let the premises.

CIAWA RESPONSE:

Section 60(i) of the RTA provides that a residential tenancy terminates on the death of all the tenants.

This provision is not seriously prejudicial to a landlord as it is relatively simple to gain vacant possession and relet the premises in such circumstances.

Where the resident is renting both site and park home or caravan the RPLT could reasonably include provision for termination similar to the RTA.

The suggestion that a tenancy automatically terminates is however at odds with the earlier RIS proposal for persons not named in a residence agreement to be able to apply to take over the agreement. If it automatically is ended there is then no agreement for them to take over.

Any provision should include express reference to the application of the disposal of abandoned goods provisions in the RPLT to uncollected property of a deceased resident.

12.2 HOME OWNERS

An issue identified in the discussion paper concerns the potential liability of a sole tenant's estate for the unexpired term of the lease when the tenant dies. The RPLT Act does not directly address this issue.

For site agreements with home owners, as the estate of the home owner will need to sell or remove the home, automatic termination is not considered appropriate. During this period the park operator is unable to re-let the site and would suffer financial loss if the rent is not paid.

CIAWA RESPONSE:

If the deceased owned the moveable home situated on the park site then until the park home is either on sold by the estate or removed the park operator cannot relet the site.

CIAWA would support a change that provided for a fixed term agreement to come to an end where all of the residents have died, but only when the vacant possession of the site is provided by the estate. Any provision for this would also require consideration of a positive obligation on the estate to remove the park home if it cannot be sold on site to a new resident, and also address how this would impact on the park operator's rights to dispose of abandoned goods where the estate takes no steps to deal with the park home within a reasonable time after the death of the resident.

The imposition of the ongoing obligation to pay site rent would act as a commercial incentive to an estate to resolve quickly the issue of ownership of the moveable home.

Where a site is leased only on a casual basis but to a long term resident, the RPLT should still permit the agreement to continue provided the estate continues to comply with the obligations under the agreement including paying the site rent, until the estate has been able to dispose of the site home.

13. TERMINATION OF TENANCY FOR DAMAGE TO PROPERTY AND VIOLENT BEHAVIOUR

Whether additional measures should be included in the RPLT Act to enable park operators to effectively deal with damage to property and violent behaviour by tenants.

CIAWA RESPONSE:

The current provisions do not give the park operator adequate power to protect the interests of other park users. We refer to Appendix 2, responses from a CIAWA Member survey into Park Security from 2013 following the death of a Caravan Park Manager at Kingsway Caravan Park.

Without some reform of the regulatory framework for violent and disorderly behaviours it is difficult for a park operator to protect the Interests of themselves and the other park residents.

Although violence restraining orders may be obtained they also require attendance to court, whereas some immediate short term restraint may be required to secure the safety of others.

CIAWA supports the introduction of temporary exclusion orders as identified in Option B.

Enforceable temporary exclusion orders would facilitate intervention by police at an early stage before any threat of violence or wilful damage has been carried out.

It would be necessary to make it an offence to not comply with an exclusion order, which in turn would empower the police to remove the resident from the premises.

In regard to the potential for homelessness of the excluded person, the focus should be on the protection of the other residents of the park, not on the individual responsible for the disorderly behaviour.

CIAWA supports the introduction of the proposed amendments as per Option C.

Given that park living is communal in nature there is a need to formulate laws that protect the greater interest of the park residents. Violent and antisocial behaviours should not be tolerated and are in any event a fundamental breach of the residential agreement.

The availability of a right of appeal to SAT provides the resident with sufficient protections against the arbitrary or capricious use of this power by a park operator.

14. PARK RULES

Is there a need for greater regulation concerning park rules, including development and variation of rules, enforcement of rules and consequences for breach?

CIAWA RESPONSE:

CIAWA encourages cooperation with residents as best business practice and supports consultation with long term residents but the final say on what rules should apply needs to remain with the park operator.

The current arrangements permit a flexible approach to park rules and their enforcement.

Provide that park rules are not inconsistent with the terms of a site lease, there should be no restriction or further regulation of such rules.

Park management is already the subject of a regulatory licensing scheme which is responsible for monitoring the performance of caravan and camping sites in Western Australia. Systemic problems will lead to loss of the license to operate the business. There is no need for a further layer of administrative oversight under the RPLT

Section 59 to 61 of the RPLT in any event requires the creation of a park liaison committee which provides long stay residents with the opportunity to engage with the park operator in regard to rules and the general facility and amenity of the park.

The drafting of the description of a “breach” of the “quiet enjoyment” needs to be carefully worded.

15. RENT VARIATION

15.1 FREQUENCY OF RENT INCREASES

To provide fairness and certainty in relation to rent increases for tenants (many of whom are on fixed incomes), while maintaining some flexibility to allow for park owners to adequately recover costs and make a reasonable return on their investment.

CIAWA RESPONSE:

CIAWA agree with the Department that there is no need for change.

15.2 METHOD OF VARYING RENT

How to provide fairness and certainty in relation to rent increases for tenants (many of whom are on fixed incomes), while maintaining some flexibility to allow for park owners to adequately recover costs and make a reasonable return on their investment.

CIAWA RESPONSE:

Regulation consistent with other similar legislative controls on commercial tenancies (s11 Commercial Tenancy (Retail Shops) Agreements Act) and residential tenancies (s30 to 32 RTA) would be acceptable.

Any provision should not prohibit a market valuation.

Reference of valuations should be done by independent arbiter not SAT. The use of valuers to determine market rent however is costly and may exceed the benefit sought to be gained by a dispute over market rent. The law needs to permit the parties to exercise commercial common sense.

Market reviews are an essential part of a caravan or residential park business. s31 of the RPLT provides an adequate control on market rent valuation.

The RTA does not prohibit market rent reviews. s30 to 31B provides a flexible mechanism for increase of rent both in fixed and periodic term leases.

Tenants can be better protected by allowing market rent reviews but imposing restrictions similar to s11 Commercial Tenancy (Retail Shops) Agreements Act, which prohibits ratchet rent review clauses that permit the lessor to choose the review method that will give the greatest return.

15.3 UNFORSEEN COSTS

How to allow for sufficient flexibility so that park operators can recover genuine increases in operating costs.

CIAWA RESPONSE:

S32(2) of the RPLT provides the flexibility of park operators to contract for the reasonable recovery of expenditure in relation to the park. In particular change can be made to enable the park operator to recover a proportion of rates and taxes from the resident.

If there was not flexibility in the ability to charge for direct ownership costs, the cost would have to be factored into the rent being recovered. This provides certainty to the resident as the agreement defines what is or is not payable by the resident.

Option B as a provision would give rise to unnecessary levels of complexity in determining what a significant increase was. The provision would require substantial disclosure of expenditure both before and after the relevant event to determine whether any increase was reasonable.

16. FEES AND CHARGES

16.1 COST RECOVERY IN RELATION TO FEES

Should additional fees be limited to the amount required in order to recover the actual costs incurred by a park operator in relation to the particular item or service.

CIAWA RESPONSE:

There is currently no prohibition on a residence agreement permitting the recovery of costs of services supplied to the site. Payment of loadings on cost is permitted if agreed.

Certain costs such as visitor fees are based on actual used costs / common facility uses.

The current position should be maintained.

16.2 COSTS OF TENANCY AGREEMENT

Should park operators be prohibited from passing on the costs of preparation of a long-stay agreement to the tenant?

CIAWA RESPONSE:

The proposed change would make the RPLT consistent with the RTA and the Commercial Tenancy (Retail Shops) Agreements Act.

16.3 VISITOR FEES

Disputes often arise about the charging of visitors' fees.

How to provide a means by which park operators are able to recoup costs involved in maintaining and upgrading shared facilities that are used by both tenants and visitors, so as to ensure the long-term viability of the park, while ensuring that the charging of visitor fees reflects the actual cost incurred in providing those services to visitors.

CIAWA RESPONSE:

Visitors fees are a charge levied against all park visitors to cover the cost of maintaining the common facilities and in particular the common ablutions.

Visitors incur a real cost to the operator and the visitor fee is intended to recover in some small way the increased cost of provision of those services.

Caravan Parks incur high costs in consumption charges and fees for water, including a percentage rate of water consumption as a sewer discharge fee. Even if a permanent residents guest only confines their use to the site they are visiting, the operator incurs a significant cost just in water fees from the state government.

Independent research into the fixed cost of providing a site in a commercial caravan park was undertaken by Haeberlin, a consultancy firm who produced a report on Industry Benchmarking of occupancy and fixed costs of providing a service. This report is included as Appendix 3.

Option D is commercially unacceptable.

Both RPLT agreements and RTA agreements normally specify a maximum number of residents per property. Exceeding the maximum number is a breach of the lease.

The visitor fee is aimed at preventing abuse of the ease terms regarding maximum numbers who can use the facilities of the park and in particular who can use the site. Caravan sites have traditionally been invoiced on the basis of the number of users of a site. Motel and Hotel rooms apply the same standard, guests are limited to the number that have booked into a room and additional guests are subsequently charged for or simply not allowed to access.

In mixed use parks it is particularly important to regulate the numbers in the long stay sites to prevent abuse of the facility by friends or relatives who otherwise would have to pay for a site just moving on to the tenant's sites.

16.4 ENTRY FEES

CIAWA RESPONSE:

CIAWA agrees with the prohibition on entry fees and it is of interest to note that in this instance the issue is not supported as it may put at risk the provision of affordable housing by caravan parks, issues which many other options would also put at risk but have not been identified as doing so.

16.5 EXIT FEES

Exit fees are not currently regulated by the RPLT Act.

How can regulations provide for fairness and a degree of certainty for those tenants who utilise shared equity and/or are charged exit fees, while maintaining some flexibility to allow for innovation in the residential parks sector so that park operators are able to achieve a commercially viable return on their investment.

CIAWA RESPONSE:

The regulation of exit fees is a complex one as there are numerous methodologies used to determine how much the exit fee will be. It is an issue that concerns the Park Home Park market more than the mixed use parks.

The complexity and diversity of methods for calculating an exit fee is best regulated by summary of the effect of the exit fee in the disclosure statement, and a prominent statement requiring the resident to obtain independent legal advice as to the consequences and effect of signing the contract and guarantees.

The proposed amendments are directed primarily at the park home parks / lifestyle village's agreements.

They are similar in nature to obligations of disclosure in retirement village contracts.

The complexity and diversity of methods for calculating an exit fee is best regulated by summary of the effect of the exit fee in the disclosure statement, and a prominent statement requiring the resident to obtain independent legal advice as to the consequences and effect of signing the contract and guarantees.

16.6 PAYING FOR ELECTRICITY

How to ensure that:

- *wherever possible, long-stay tenants in residential parks pay comparable electricity charges (for consumption and electricity services) to those paid by other domestic consumers in Western Australia; and*
- *park operators receive payment that reflects the actual costs of supplying electricity to longstay tenants.*

CIAWA RESPONSE:

No further regulation is required.

Tariffs for electricity are already regulated. The Public Utilities Office of the Department of Finance annually issues an approved A1 residential tariff for park operators using Synergy or Horizon Power and a fixed service charge. CIAWA actively promote this to industry and work with the Public Utilities Office on distributing the information, as per Appendix 3.

No additional legislative amendment is required. Section 19 of the RPLT already provides a mechanism for recovery of overpayments in excess of that permitted as set out above.

The phrasing of Issue 16.6 once again raises the biased or mis-informed nature of the RIS, a tenant can only be legally charged the rate as advised by the STATE Government and this is posted in the State Government Gazette and Synergy website. It should not matter what a tenant thinks is comparable and what constitutes being comparable.

If the question was not weighted against a park operator then surely it would have asked the operator for their same opinion on comparable charges to another commercial electricity customer.

17. MAINTENANCE AND SHARED FACILITIES OR PREMISES

17.1 SERVICES AND FACILITIES PROMISED BY THE PARK OPERATOR

Whether the RPLT Act should deal with those circumstances where a service or facility promised to tenants by the park operator is not provided.

CIAWA RESPONSE:

No additional legislative provision is required.

The ACL already makes provision for deceptive and misleading conduct claims which would entitle a resident to terminate a long stay agreement if it was established that there had been pre-contractual representations that were not true and which misled a resident.

In some cases despite a park operators best efforts a representation regarding facilities may not be met due to other intervening events such as a local council refusing to approve the development of a particular aspect of a park.

If a specific power is extended to SAT in the form proposed by this option B, there should be specific exemptions for the park owner to provide that there is no claim against a park operator where a representation was made in good faith but due to factors beyond the control of the park operator (such as non-approval by a regulatory authority) the representation was not able to be fulfilled.

To provide certainty as to the representations only representations made in writing should be actionable in SAT by a resident and must exclude issues where the problem relates to a leasehold or Development Application issue.

17.2 ONGOING MAINTENANCE AND REPAIR

How to ensure that the SAT has adequate power to address issues concerning performance of maintenance obligations particularly in relation to shared property.

CIAWA RESPONSE:

There is sufficient regulation of this issue under the RPLT

The imposition of a statutory minimum maintenance standard as shown in Option B is an unnecessary additional regulatory impost. Parks are already required to meet Health Act standards, Caravan park licensing standards and comply with Local Laws.

Imposing another tier of maintenance regulation would unnecessarily increase the operating costs of a park, which would be in turn passed on the residents by way of higher rents, another option that would see the removal of caravan parks as an affordable housing alternative.

17.3 TRANSPARENCY IN RELATION TO MAINTENANCE COSTS

Should costs of maintaining and improving park facilities should continue to be included in the rent, as opposed to the park operator charging a separate fee.

CIAWA RESPONSE:

Unless a park operator is permitted to recover maintenance and park overhead costs directly from a resident by way of an outgoing charge, there is no basis for compelling a park operator to disclose the expenditure on such items. There is no comparable provision in the RTA in regard to tenancies.

17.4 FUNDING OF CAPITAL IMPROVEMENTS

Are the rent review provisions in the RPLT Act sufficient to allow park operators (particularly those providing long term leases) to maintain and improve park facilities over time. Is there a mechanism to allow for funding of capital improvements in a park?

CIAWA RESPONSE:

Maintenance and capital investment in a park is a matter solely for the owner of the park. Any legislative intervention requiring an arbitrary minimum commitment to such items will only increase pressures on rents and reduce the flexibility of park operators to manage their properties effectively.

Existing licensing requirements will ensure that parks are maintained to a required health standard.

18. SALE OF HOMES ON SITE

18.1 THE RIGHT TO SELL THE HOME WHILE IT IS SITUATED AT THE PARK

As the owner of the home, a home owner has a clear right to sell that dwelling. However, issues arise with regards to whether a person has the right to sell the dwelling while it is located on the site. For home owners, any requirement to move a home from the site in order to sell it could present significant practical difficulties. For park operators, concerns sometimes arise in relation to access to a park by potential purchasers. How can it be made clear the right of a home owner to sell a home while it is located on-site in a park?

CIAWA RESPONSE:

The status quo essentially maintains the contractual position that the site agreement is between the resident and the park operator. As such there is no inherent right for the resident to sell its interest in the site agreement. The park Operator retains the final say as to whether a buyer of the park home will be permitted to remain within the park on the site.

From a park operators perspective it is essential that they retain the right to contract only with those persons they consider suitable to reside in the park, as previously mentioned 100% of respondents to

CIAWA's Member survey stating they must retain all rights to determine who resides in the Park, for the safety and peaceful living of the other tenants as much as any other issue.

If the approach in Option B were taken, it would only be acceptable to a park operator if any sale of the home on site was made subject to the buyer being approved by the park operator and entering into a park site agreement in a similar manner to any assignment of a residential or commercial lease.

If the resident wants to sell the park home on the basis it was to be removed by the buyer there would be no requirement for park operator consent.

18.2 INTERFERENCE IN SALE BY PARK OPERATOR

How to ensure that the RPLT Act contains adequate protections for a tenant to prevent a park operator from hindering or obstructing the sale of a home.

CIAWA RESPONSE:

Apart from the requirement to give reasonable access to inspect the park home, the other restrictions suggested would be problematic to enforce due to their subjective nature. If a park operator is asked about aspects of the park by a potential buyer he is going to be candid about the park and its operations. If this discourages a buyer the operator should not be penalised for his honesty.

Park home owners have been known to inflate the price of their park home based on providing incorrect information. It should be set out that the park owner **MUST** give his approval to allowing the new tenant onto his park before they can purchase the park home, not visa- versa.

A park owner must continue to have the right to deny access to his property in the interest of protecting other himself and other tenants or tourists.

If a buyer in addition to wanting to purchase the site home, also wants to enter into a site agreement, then the park operator would be required to provide all of the relevant disclosure information regarding the site agreement pursuant to the RPLT.

18.3 USEFUL LIFE OR A PARK HOME

CIAWA RESPONSE:

This issue fails to identify that many of the permanent resident dwellings in Western Australia are old caravans and this issue cannot be address with the options provided.

It is the sellers obligation and responsibility to provide all relevant information to the purchaser, and for the purchaser to make an informed decision no differently than a normal house or car purchaser must, which could include inspection by an independent third party.

18.4 EXTENT OF PARK OPERATOR INVOLVEMENT IN THE SALE PROCESS

Currently, the tenant is required to tell the park operator of their intention to sell the home and to advise whether they intend assigning their rights under the site agreement, however, there is no requirement in the RPLT Act for the tenant to obtain the consent of the park operator before entering into a sale agreement.

How can it be ensured that the park operator and purchaser can enter into tenancy arrangements with access to all relevant information and the home owner can sell the home with minimum interference.

CIAWA RESPONSE:

Any sale of a site home on site must be subject to the consent of the park operator and subject to the buyer entering into a new site agreement with the operator.

As part of the consent process the buyer should be required to provide information regarding their background, references and financial stability to enable an informed consent to be made in regard to the potential buyer. 14 days' notice would permit a reasonable time for such appraisal to be undertaken.

As part of the consent procedure, the park operator would be required to give disclosure pursuant to the RPLT to the buyer. Option C relates to a statutory implied agreement of subject to consent or new lease.

18.5 CREATION OF TENANCY RIGHTS FOR THE PURCHASER

There is no provision in the RPLT Act compelling park operators to enter into a lease arrangement with a purchaser of a park home, either under an assignment or a new lease. How to provide a mechanism for ensuring that purchasers can obtain tenancy rights on reasonable conditions, while ensuring that park operators retain an adequate level of control over the process.

CIAWA RESPONSE:

A park operator makes decisions on who is permitted to live in a park for the protection of the other tenants, and to ensure that new tenants are compatible with those tenants who reside in the park, those that are there for the qualities that communal park living can bring.

Option D would be a serious imposition on the park operator's rights to regulate the residents of the Park, in that it takes away any discretion to choose the character of the residents in the park.

The RIS states on page 127 that "any inability to secure tenancy rights for prospective purchasers would significantly impede the capacity of a home owner to sell and maximise the return from their asset".

CIAWA again supports the fact that the item being sold is the depreciating asset and in many cases a similar product could be purchased new at a similar cost to an ageing permanent residence. It is the site location in which the prospective purchaser sees value.

CIAWA wishes to point out to Government that it is important for the majority of park operators and residents that the option of living in a Caravan Park is seen as a secure and attractive option for residents, both existing and new.

Caravan Park owners, managers and operators endeavour to act in the best interest of the residents and tourists who reside and visit their Caravan Park. The RIS does not describe this as a key motivator to why the majority of permanent residents are content and happy with the existing park rules, living conditions and arrangements.

18.6 APPOINTMENT OF PARK OPERATOR AS THE SELLING AGENT

Some long-stay agreements provide that the park operator must be appointed as the sole selling agent in relation to the sale of a home on-site. Some concerns have been raised in relation to this practice.

CIAWA RESPONSE:

CIAWA believe no change is required

The real disadvantage of this proposal is that many real estate agents do not understand the difference between a park home and an ordinary home.

It is common for a real estate agent to use a standard REIWA contract which is completely unsuitable for the sale of an on-site park home. What is being sold is a chattel, not an interest in land.

A park operator has the advantage of being able to negotiate the sale of the park home on terms dictated by the resident, but also make all necessary disclosures under the RPLT while at the same time negotiating a new site agreement with a buyer.

If a third party agent is engaged to sell the park home, the park operator should not be accused of interfering with the sale simply because he asserts his rights to vet a buyer and negotiate a new site agreement.

18.7 COMMISSION FOR PARK OPERATOR ACTING AS SELLING AGENT

The RPLT Act provides that if a park operator acts as a selling agent, the park operator is entitled to be paid a reasonable commission by the long-stay tenant when a home is sold, provided that:

- there is a written agreement between the park operator and the tenant for the park operator to act as the selling agent;*
- the commission to be paid, or the method of calculating the amount is specified in the selling agency agreement; and*
- the home is sold as a result of the agency of the park operator under the selling agency agreement.*

What fees should be payable when the park operator acts as selling agent.

CIAWA RESPONSE:

Where the residence agreement requires the park operator to be appointed as selling agent, it will be reasonable that any fee payable be spelt out clearly in the agreement. If a fee is set by regulation it should be a fee exclusive of disbursements which should be separately recoverable.

Where the park operator does not have to be appointed but may be appointed, the agreement on a fee can be deferred to the time of sale as the resident will have the option of using a third party agent if a fee cannot be agreed with the operator.

18.8 FEES PAYABLE TO A PARK OPERATOR WHO IS NOT THE SELLING AGENT

Should a park operator, who does not act as the selling agent, be able to charge an administration fee for costs incurred in relation to the sale of a home?

CIAWA RESPONSE:

Yes.

In this situation the Park Operator incurs administrative costs that they would not otherwise be called upon for. They are assessing the suitability of the new resident and entering into a new site agreement to accommodate the vacating resident. The assessment is essential to ensure that the proposed resident is a suitable resident and will not be a disruptive element in the community of the Park.

Under the RTA and the Commercial Tenancy (Retail Shops) Agreements Act owners are permitted to charge the cost of assessing an assignee of a lease and arranging the assignment. The process for a Park Operator assessing an incoming resident in the case of the sale of a park home is in a similar situation to the commercial landlord.

It is reasonable for the Park Operator to be able to cover the reasonable cost of ensuring for the benefit of all park residents that the new Resident is a suitable person to reside in the park.

19. PARK OPERATOR CONDUCT PROVISIONS

Does the RPLT Act and Australian Consumer Law (ACL) adequately address issues arising as a result of inappropriate conduct by park operators.

CIAWA RESPONSE:

Park operators are already subject to the ACL and accordingly there would be no issue taken with the SAT taking the ACL into account when determining disputes between the parties.

The RIS states on page 138 that *“a number of respondents to the discussion paper indicated that some tenants felt “bullied” by park operators or were reluctant to speak out in relation to matters of concern for fear of retaliatory conduct”*.

20. DISPUTE RESOLUTION

20.1 WHO SHOULD HAVE JURISDICTION?

CIAWA RESPONSE:

CIAWA believes the SAT is the most suitable body for resolution of disputes, having appropriate knowledge and expertise surrounding the complex legislation and regulations governing the industry.

For example in cases regarding market value, the temporary appointment of a qualified valuer is required to ensure suitable expertise is obtained.

20.2 POWERS OF THE SAT

Are the current powers of the SAT in determining various matters under the RPLT Act sufficient or should they be broadened.

CIAWA RESPONSE:

In some cases, the SAT does not have powers to enforce its own determinations. Consideration should be given to vesting the power to deal with evictions and related rent recovery action to the Magistrates Court in the same manner as residential tenancy disputes.

21. SHOULD PARK LIAISON COMMITTEES BE MANDATORY OR OPTIONAL?

Should Park Liaison Committees be mandatory or optional?

CIAWA RESPONSE:

Park Liaison Committees (PLC) should not be compulsory or mandatory.

If the holding and attendance at a PLC are made mandatory for Park Management and regulations identify a fine or penalty for a Park Manager not conducting or attending a meeting, then equivalent penalty provisions will be needed against residents to compel their participation in the committee.

This will create angst and unease among residents who may feel pressured into attendance when they would rather not.

For Further detail on information in this submission please contact:

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Appendices – Index

1. CIAWA Members Survey – Summary of Responses
2. BDO Economic Benefit Report - Commercial Caravan Park to a Local Community
3. Summary of Findings – Industry Benchmark Research Haeberlin Consultants

Appendix 1 – CIAWA Members Survey – Summary of Responses
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The Caravan Industry Association WA issued a survey to Members asking for responses to 17 questions relating to options in the Residential Parks Long Stay Tenant Act review with a comment area to capture general feedback. The survey was open for one week and there were 42 responses representing 58 parks (one response from some multi park owners).

1. When asked if a permanent resident should have the ability to be granted tenure over the caravan park;
 - **100% of respondents answered NO**
2. When asked if a permanent resident should be able to lodge a caveat on the caravan park;
 - **100% of respondents answered NO**
3. When asked if removing the “without grounds” termination notice from the Act, 88% of respondents support keeping the option for park operators to issue a tenant notice of termination without grounds
4. 78% of respondents support keeping the ability to terminate a fixed term agreement upon the sale of the park
5. 64% of respondents support Option A of the paper which identifies no minimum lease period.
6. When asked if periodic or short term leases should be retained;
 - **100% of respondents answered YES**
7. 78% of respondents do not support any manner of compensation being required to be paid to a tenant.
8. When asked the question in what circumstances should a tenant be paid compensation, the responses include:
 - If the operator broke any clauses in the tenancy or leased arrangement. This allows the tenant to accept the agreement before it begins, or elect to take their business elsewhere. As long as the compensation is known beforehand the operator will be able to make informed decisions, but will have the ability to end an agreement if the need arises by paying compensation.
 - Relocation, and if the park closes down
 - For tenant improvements provided the improvements were agreed to before being built
 - A total of eight comments were made that in the case of a Breach of Fixed Term Tenancy compensation should be applicable, including to the operator for a tenant breach.

9. 85% of respondents do not support greater levels of disclosure
10. 73% of respondents believe a tenant should provide disclosure when their position changes, such as becoming unemployed, a change to benefit support or other change that may impact on their ability to pay their site fee
11. When asked to identify the length of licence period for caravan park operators that would match the lease period able to be offered to tenants, 42% of respondents said licences should be issued for 5 years and under. 30% of respondents identified licences should be issued for 20 years.
12. When asked if the park operator should retain all rights to determine who and under what lease conditions a new purchaser can lease a site in the park;
 - **100% of respondents answered YES**
13. 69% of respondents believe that tenants should be required to seek independent advice from a third party that confirms the tenant understands what they are entering into when buying a park home or entering a lease
14. 70% of respondents support the definition of caravan parks remains the same, that they are called Caravan Parks
15. 57% of respondents say that since the introduction of the Residential Parks (Long Stay Tenant) Act 2006 they have released permanent sites or not taken on permanent residents because the regulations required to provide permanent sites have become too onerous
16. 76% of respondents stated that park operators should have the ability to manage their business as they see fit, such as being able to meet the market demands and fluctuate between numbers of permanent and tourist sites as demand warrants
17. When asked to provide comments the responses included;
 - 12 responses said they would want to continue with a "MIX" of Permanents and Tourists.
 - Park operator should have option of long term casual as a means of terminating tenancy immediately should tenant pose a threat to the general amenity and comfort of other residents or operators,
 - More flexibility in operators managing long stay tenants. If long stay tenant agreements and requirements become too cumbersome and inflexible it will discourage operators (including myself) to take on more, and would seek to remove existing long stay tenants

- It is getting to the stage that Park owners are losing any rights to run their business. While we understand that there has to be some "laws" in place to look after tenants, it is getting to the stage that the tenants have more rights than the business/land owner
- It needs to be understood that if some of these proposals are put into place they will apply equally to the owner of a \$2,000 caravan as a \$300,000 park home!
- The overall sustainability for our industry is vested in our ability to remain as flexible as possible over the use of our land. A 'tenant' is just that and should have no hold, decision making etc over land that does not belong to them
- I believe a Park Owner, who has invested hugely to provide his park for use, should at all times be able to do (A)what he believes is in the best interests of his tenants and be able to decide who comes and stays in his Park and (B)he should at all times be able to do what he chooses with his land.
- Prospective tenants do not like the long convoluted tenancy agreement (as set down in the Regs) and often do not sign
- Flexibility should be available to park operators to either choose to operate a mix of both and/or a permanent park home park / lifestyle village or they will simply change the business completely