WHAT WE HEARD – FEEDBACK TO THE DISCUSSION PAPER FOR THE STATUTORY REVIEW OF THE *RESIDENTIAL PARKS (LONG-STAY TENANTS) ACT 2006*

The discussion paper for the statutory review of the *Residential Parks (Long-stay Tenants) Act 2006* (RPLT Act) was released in August 2012 for a three month period of consultation. Stakeholders were invited to provide a submission and/or respond to a series of survey questions.

The Department received:

- 709 survey responses:
    - 686 tenant responses; and
    - 23 park operator responses.
- 81 submissions:
    - 44 submissions written from the perspective of the tenant;
    - 26 submissions written from the perspective of the park operator;
    - 8 submissions from Government departments or independent statutory authorities; and
    - 3 submissions from individuals with an indeterminate perspective.

The purpose of this summary is to provide an overview of the range of viewpoints expressed on the various issues canvassed in the Department's discussion paper. It should be emphasised that the Department holds no particular position on any of the views expressed in this summary. A list of the main terms used in this summary is provided on page 11.

The information will be used to formulate options which will be presented in a consultation regulatory impact statement (C-RIS). Following the distribution of the C-RIS, stakeholders will have a further opportunity to provide us with their views about the options that will be outlined in the paper. This feedback will also be used to make recommendations to Government about changes to park tenancy laws.

MAIN CONCERNS OF PARK STAKEHOLDERS

The discussion paper noted that there are two types of tenants on residential parks, namely those who rent both a dwelling and a site from a park operator ('renters') and those who rent a site only as they own their dwelling ('owner-renters'). It was also noted that there are three types of parks, specifically:

1. mixed-use caravan parks, which contain sites for holidays (short-stays) and residential occupation (long-stays);
2. park home parks, containing sites for residential occupation only; and
3. lifestyle villages, leasing only long-stay sites for a very long duration.

The majority (more than 50%) of respondents, both tenants and park operators, were from mixed-use caravan parks and lifestyle villages. We received few responses from renters or tenants and park operators from park home parks.

In considering the feedback as a whole, tenants were mainly concerned about security of tenure and ongoing affordability of park living. Tenants appeared to have somewhat different tenure concerns, depending whether they reside in a lifestyle village or a mixed-use caravan park.

- Mixed-use caravan park tenants were mainly concerned about not being offered a lease with sufficient tenure.

- Lifestyle village tenants were mainly concerned about 'unexpected' events affecting tenure during a tenancy (eg. sale of a park, insolvency).

Park operators on the whole were concerned about laws limiting their ability to manage the park according to their needs. The primary areas of concern about reduced flexibility to manage appeared to differ depending on whether operators manage a lifestyle village or a mixed-use caravan park.

- Mixed-use caravan park operators were mainly concerned about being locked into statutory minimum requirements for long-stay residents (eg. minimum tenure and compensation).
- Lifestyle village operators were concerned about restrictions on the lease terms they could offer (eg. fees and charges) and standardised lease agreements.

As a further general observation, it appears mixed-use caravan park operators are particularly concerned about any changes to park tenancy laws that might occur following the statutory review process.

OTHER CONTENTIOUS ISSUES

From the feedback to the discussion paper, the other contentious issues are:

- termination of periodic agreements 'without grounds';
- laws requiring operators to provide agreements with a minimum fixed term;
- termination of fixed term agreements when a park is sold;
- compensation for the termination of periodic tenancy agreements;
- laws dealing with the variation of rent;
- park operator as the exclusive selling agent and associated fees; and
- laws dealing with the situation when park facilities are not provided or not provided to an agreed or reasonable standard.

Information about the differing views of stakeholders in relation to these contentious matters, and other matters outlined in the discussion paper, are provided below.

GENERAL FEEDBACK REGARDING THE ISSUES RAISED IN THE DISCUSSION PAPER

ISSUE 1 - SECURITY OF TENURE

(a) 89-day contracts

As noted in the discussion paper, tenancy agreements that are less than three months (90 days) in duration are not covered by the RPLT Act. While it was always intended the RPLT Act would extend to all non-holiday stays at a residential park, rolling 89-day contracts could be used to avoid the lease agreement being subject to the provisions of the RPLT Act.

Respondents were asked whether park tenancy laws should extend to all non-holiday stays, including those who have signed 89-day rolling contracts. This issue primarily impacts mixed-use caravan parks.

While some respondents were unclear about this type of agreement, tenant groups generally (at least 50% of all who responded to this question) supported extending the coverage of the RPLT Act to include those on 89-day rolling contracts. Some of the comments made in support are outlined below.

- The use of rolling 89-day contracts indicates a longer stay than three months and these residents should be entitled to coverage under the Act and minimum standards.
- Some park operators may be using these rolling contracts to keep some residents outside the operation of the RPLT Act.

Park operators (particularly mixed-use caravan park operators) were the largest group who were opposed in submissions and some of the comments made are outlined below.

- The use of 89-day contracts provides an opportunity for operators to assess prospective tenants.
- These contracts provide flexibility for short-stays and those that might legitimately overrun the agreed 89-days (eg. waiting for a house to be built).

(b) Termination of periodic agreements 'without grounds'

The RPLT Act currently provides for the termination of periodic agreements 'without grounds' by requiring that renters receive a minimum notice period of 60 days and owner-renters receive a minimum notice of 180 days. A fixed term agreement cannot be terminated 'without grounds' before the agreed expiry date.

Respondents were asked whether park tenancy laws should continue to provide for the termination of periodic agreements 'without grounds.' This issue primarily impacts mixed-use caravan parks and to a lesser extent, park home parks.

At least 50% of all respondents to this question, particularly tenants and tenant groups, supported removing the ability to terminate periodic agreements 'without grounds.' Some of the comments made are outlined below.

- Many residents prefer, but are unable to secure, fixed term agreements from operators.
- As there is no right of appeal, residents on periodic agreements feel vulnerable.
- Tenants feel that park operators should always have a reason to terminate a tenancy, particularly where tenants have made improvements to the rented site.

Of those who opposed removing the ability to terminate periodic agreements 'without grounds,' the largest group was park operators, particularly mixed-use caravan park operators and some of the comments made are outlined below.

- Periodic agreements provide both parties with flexibility to terminate, upon giving the required notice period.
- If the parties are unable to terminate agreements 'without grounds,' park tenancy laws would need to contain another general mechanism for the termination of periodic agreements.

(c) Should leases contain a minimum fixed term?

A suggestion, which was put forward by tenant representatives and outlined in the discussion paper, was for tenancy agreements to contain a mandatory minimum fixed term, eg. 5 years, whereby the lease agreement could only be terminated on specific grounds set out in the legislation. Respondents were asked to comment on the suggestion.

Tenants and tenant groups (at least 50% of all respondents to this question) supported the suggestion and some of their comments made are outlined below.

- It could provide some certainty for tenants and facilitate the sale of park homes by making them attractive to purchasers.
- It could provide more certainty to operators and prospective investors in planning and forecasting.

Mainly park operators opposed this suggestion in submissions and some of their comments are outlined below.

- It could limit operators' flexibility and may not be consistent with external constraints, such as head lease conditions, the local government annual licensing requirement, zoning restrictions and/or Planning Commission requirements.
- It could make the sale of parks more difficult and reduce the supply of parks for long-stays.

(d) Termination of fixed term agreements when a park is sold

Currently, if a park is being sold subject to vacant possession, tenants can be given notice to vacate, including those with fixed term agreements during the currency of the fixed term. In the discussion paper, respondents were asked to comment whether park tenancy laws should prevent the termination of fixed term agreements when a park is being sold.

From survey responses and submissions that included comment on this matter, tenants and tenant groups generally supported this notion and some of the comments made are outlined below.

- It could provide some security of tenure for tenants.
- It would be consistent with the rights of tenants under the *Residential Tenancies Act 1987*.

More than 50% of those who responded to this matter via a submission were not in support, with the majority being mixed-use caravan park operators, and some of the comments are outlined below.

- It should be left to the parties to negotiate.
- Existing laws are adequate.

Note that the sale of a park as a result of insolvency of a park owner is a separate issue and is considered under the heading "Additional issue 1 - Impact of park owner insolvency" on page 10.

ISSUE 2 – COMPENSATION

(a) Compensation for the termination of periodic tenancy agreements

The discussion paper noted that currently, the compensation provisions of the RPLT Act do not apply to tenants who have signed periodic tenancy agreements. This issue primarily impacts mixed-use caravan parks and to a lesser extent, park home parks.

Stakeholders were divided on this issue. Fifty five per cent of submissions indicated support for applying compensation provisions in park tenancy laws to tenants who have signed periodic tenancy agreements, while 45% were opposed.

Below are some of the comments made by those who supported the payment of compensation in these circumstances. Tenants were the main supporters.

- (Tenant perspective) Tenants would need funds to relocate.

- (Park operator perspective) An entitlement to compensation should also be extended to operators when tenants terminate periodic tenancy agreements.

Below are some of the comments made by those who did not support the payment of compensation when periodic agreements are terminated. Mixed-use caravan park operators were mainly opposed.

- (Tenant perspective) Tenants would prefer to be able to remain in a tenancy rather than receive a notice to vacate and statutory compensation as compensation would be inadequate to cover the inconvenience and difficulty in finding another site for relocation.
- (Park operator perspective) Periodic agreements provide both parties with flexibility to terminate, upon giving the required notice period.

(b) Compensation for relocating a tenant within a park

The discussion paper noted that there are no express provisions in the RPLT Act dealing with compensation for relocation within a park. However, currently, where a park operator reserves the right to reposition an on-site home to a comparable site in the park, the prescribed lease agreement (that is, an on-site home agreement or a site-only agreement) provides that the park operator must pay for all the tenant's expenses resulting from any repositioning of the on-site home.

Most (75%) of the respondents to this question, mainly tenants, supported the payment of compensation for relocation within a park and some of the comments are provided below.

- The park operator should pay for relocating within a park if it is at the operator's instigation (there was no broad agreement about what matters would be taken into account if compensation was payable in this situation).
- The current provisions are fair.

Some park operators, mainly those operating mixed-use caravan parks, were concerned about being made responsible to pay compensation for a tenant's dwelling that has become immoveable over time through lack of reasonable maintenance.

ISSUE 3 – DISCLOSURE

(a) Assessment of current disclosure requirements

Tenants and park operators overall indicated the current pre-contractual disclosure requirements were 'good.'

However, a few tenants indicated they do not receive information about changes to park rules and new fees in advance.

(b) Concerns about the complexity of lease agreements

Some park operators, particularly those operating mixed-use caravan parks, expressed concern in submissions that tenants do not read and understand the lease agreement, including what happens at the end of a fixed term lease (specifically, that tenants may be required to move at the expiry of the fixed term).

Some tenants expressed concern about the complexity of the lease agreement and/or a lack of access to legal advice.

(c) Additional pre-contractual information that may be useful

Some tenants suggested that before signing a lease, it would be helpful to receive written information from the operator about:

- the current financial situation of the park;
- whether the operator owns or leases the park; and
- any future plans for the park (or a statement that the park operator cannot make any promises about the park's future).

ISSUE 4 - RENT VARIATION

The RPLT Act establishes the minimum notice period that is required to be given and regulates the frequency of rent reviews before an increase in rent applies.

In the discussion paper, respondents were asked whether tenancy laws should provide for a fixed method of varying rent.

The majority of those who responded to this question (approximately 70%), who were mainly tenants and tenant groups, supported a fixed method of varying rent, indicating that such a mechanism would assist in allaying their concerns about the continued affordability of their park.

Mostly mixed-use caravan park operators did not support a fixed method of varying rent. Some of their comments are outlined below.

- How rent is varied should be negotiated and fully disclosed, imposed price controls would likely reduce the supply of long-stay sites and could increase rents as operators attempt to maintain the economic viability of their parks.
- A prescribed method may be suitable for short term tenancies but a one-size fits all approach may not be flexible enough for operators to:
    - allow for the variation of costs that exist amongst different parks; and
    - deal with uncertain future market conditions.

Other comments made about rents are set out below.

- The level of rents could potentially be offset by exit fees (not commissions) that are agreed at the start of a tenancy.
- Rent could be adjusted according to the Consumer Price Index and with a proportional adjustment for actual rates and taxes to assist operators to manage unforeseen costs.
- Tenants should have access to the valuers' reports underpinning market rent adjustments to understand the basis upon which rent adjustments are made.

ISSUE 5 - FEES AND CHARGES

(a) Visitor fees

The charging of fees for guests, family members and/or carers to stay at a park overnight or longer was raised as a concern by some tenants to the discussion paper. From the comments received, there appears to be no industry standard about what constitutes a "visitor" or for setting visitor fees.

Some tenants objected to:

- being required to pay for visitors, despite owning a home on the park that is self-contained; and
- charges being applied to carers and family members, or short visits.

In addition, some tenants indicated that they were not permitted to have visitors.

(b) Other fees for consideration

Other fees that concerned tenants include:

- fees applicable when a tenant dies during a tenancy; and
- electricity, parking, storage, recycling, garden maintenance and access keys.

A prohibition on the charging of entry fees concerned some lifestyle village operators. They supported charging entry fees to owner-renters as a mechanism to share in the capital gain attributable to the land when a tenant eventually sells on-site or to assist in funding compensation that may be payable for the early termination of a fixed term agreement.

ISSUE 6 - SALE OF HOMES ON-SITE

(a) Park operator as the exclusive selling agent and associated fees

Currently, a park operator may act as the selling agent if there is a written agreement between the tenant and operator.

Some respondents, particularly lifestyle village tenants, expressed concern that tenants were required to nominate the park operator as the exclusive selling agent as a condition of signing the tenancy agreement. In addition, in some cases, tenants were charged an exit fee in addition to any commission earned from an exclusive selling agreement.

It was suggested that if the operator is the exclusive selling agent and able to offset foregone rents by charging a selling fee, the operator can charge a lower rent than would otherwise be charged during the course of a tenancy.

(b) Comments on the status quo

In the discussion paper, respondents were asked about what changes, if any, are required to the current laws that provide for the sale of a tenant's dwelling on-site to be determined by negotiation between the parties.

54% of submissions that addressed this question, that were mainly from mixed-use caravan park operators:

- suggested no change; and/or
- emphasised the operator should have a final say in the sale; and/or
- emphasised the right of an operator to screen prospective tenants.

31% of submissions that addressed this question, mainly tenants or tenant groups:

- suggested a tenant should have the right to sell their home on-site; and/or
- emphasised the tenant should be free to choose who can sell their home.

Of the remaining submissions addressing this question (15%), respondents:

- suggested the operator should have no involvement in the sale of a home on-site; or
- made suggestions relating to the fees that should apply in relation to on-site sales.

ISSUE 7 - DISPUTE RESOLUTION

The State Administrative Tribunal

Under the RPLT Act, the State Administrative Tribunal (SAT) is the review body for disputes that arise under or in connection with a long-stay agreement. Respondents were asked whether the SAT should continue to be the review body.

There was general support (more than 50% support) for the retention of the SAT as the review body for all park tenancy disputes. Many park operators and tenants believed SAT has the expertise to deliver the formal dispute resolution function and it is cost effective. However, some respondents indicated they have not had satisfactory outcomes from matters heard by the SAT or were concerned about people outside Perth being unable to physically attend hearings.

ISSUE 8 - PARK LIAISON COMMITTEES

(a) Mandatory Park Liaison Committees

The Park Liaison Committee (PLC) is an advisory and consultative body to assist the park operator to maintain and improve the lifestyle and wellbeing of long-stay tenants. If a park has 20 or more long-stay sites, the park operator must convene and maintain a PLC for the park.

In the discussion paper, respondents were asked whether PLCs should be optional. As PLCs facilitate communication between residents and tenants over the long-term, their operation is expected to be the subject of more debate in mixed-use caravan parks, and to a lesser degree park home parks, than lifestyle villages.

In more than 50% of all submissions, stakeholders supported PLCs being optional. Mixed-use caravan park operators were the main supporters of optional PLCs. Some of the comments made are outlined below.

- Operators should not force a committee to operate as it is difficult to attract and retain people on committees.
- PLCs are ineffective.

Lifestyle village tenants were the main opponents of optional PLCs. Below are some of the comments made by opponents of optional PLCs.

- Parks, especially lifestyle villages, need a forum for residents to voice problems.
- PLCs are a valuable communication tool.
- The current law contains a sufficient defence for operators against prosecution if they have made reasonable attempts to maintain and convene a PLC.

(b) Residents' committees

Another option canvassed in the discussion paper for a local dispute resolution forum was a residents' committee. The discussion paper noted that other jurisdictions provide for a residents' committee, whose members would consist entirely of long-stay tenants, elected by tenants, to meet and discuss matters relating to their interests. A residents' committee may choose to bring matters raised in meetings to the attention of the park operator.

Stakeholders appeared to be evenly divided on this issue.

Supporters of a residents' committee provided the following comments.

- Residents' committees can operate independently from management and be less intimidating than PLCs.
- Residents' committees may provide more support to tenants.

Those who did not support a residents' committee provided the following comments.

- PLCs are a more inclusive and less adversarial option than residents' committees.
- There could be a multitude of committees potentially acting at cross-purposes, which is unproductive and time consuming.

ISSUE 9 - EXPANSION/MAINTENANCE/CAPITAL REPLACEMENT

(a) Sufficiency of the rent variation provisions to provide for the expansion of the park, maintenance, repair and replacement of capital items

Currently, park operators must set rents to ensure that sufficient provision is made for any promised expansion plans, and to cover maintenance, repair and replacement of capital items.

In the discussion paper, stakeholders were asked whether the current rent review provisions were sufficient to maintain and improve park facilities over time. This matter is expected to be a more significant issue for lifestyle villages and park home parks that offer longer term tenancies.

In submissions on this issue, park operators and tenants indicated that with good management and planning, annual increases in rent should be adequate to finance these items, especially in mixed-use caravan parks.

In relation to financing the expansion of a park or replacing significant capital items, some respondents made the following suggestions:

- A small annual fee may be preferred to entry/exit fees.
- A one-off levy could be used for a big maintenance project or facility that everyone uses.

(b) Dealing with the situation when promised park facilities are not provided or not provided to an agreed or reasonable standard

In the discussion paper, stakeholders were asked whether park tenancy laws should provide SAT with specific powers to reduce rent and/or to order specific works to deal with situations where park facilities are not provided, or not provided to an agreed or reasonable standard.

About two thirds of respondents who commented on this issue, particularly tenants and tenant groups, indicated that the maintenance of standards is an ongoing concern.

Park operators were mainly opposed and some of their concerns are:

- It could lead to potentially unnecessary applications to SAT.
- There are other legal options to deal with situations where tenants feel they have been misled.
- SAT may consider something 'reasonable' but the operator may not have budgeted for this situation and might be unable to recover these unforeseen costs.

ADDITIONAL ISSUE 1 - IMPACT OF PARK OWNER INSOLVENCY

The potential insolvency of a park owner may put tenants' tenure at risk. In the discussion paper, stakeholders were asked whether the interests of long-stay tenants who have signed fixed term agreements were sufficiently protected by existing laws.

Some park operators suggested that this is a matter for the operator and financier. In addition, some park operators indicated tenants are currently entitled to notice and may be entitled to compensation. However, on the whole there appeared to be a broad view amongst park operators and tenants that the RPLT Act is unclear in relation to this issue.

ADDITIONAL ISSUE 2 - DAMAGE TO PROPERTY AND VIOLENT BEHAVIOUR

Currently, the RPLT Act provides for the issuing of notices and enforcement through the SAT when a tenant directly breaches their obligations, including causing or permitting nuisance in the park and intentionally or negligently causing or permitting damage to premises or indirectly breaching their obligations via the actions or omissions of their guests.

In the discussion paper, stakeholders were asked whether the law should provide for park operators to exclude tenants who are threatening people or damaging property for a period of time eg. two days. It is expected that mixed-use caravan park operators and tenants would be particularly affected by this issue, as tenant turnover would be higher than lifestyle villages and to a lesser extent, park home parks.

The majority (at least 75%) of all park operators and tenants supported the option, with the following comments made.

- [Tenant perspective] The option would ensure the safety of residents, especially elderly and caravan park residents. The laws could outline strict procedures and apply in extreme circumstances only.
- [Park operator perspective] The option would ensure the safety of both tenants and employees. Some respondents queried whether the Police have adequate capacity to sufficiently deal with these matters.

Those respondents who opposed the option, of which there was no clear group, expressed the following comments.

- The Tribunal should decide, otherwise the operator has too much power.
- This is a Police matter.

Some tenants suggested there should also be provision to stop park operators intimidating residents.

TERMS USED IN THIS SUMMARY

A guide to the meaning of the terms used in this summary is provided below.

‘Lifestyle village’: a residential park, which is not a retirement village, that generally offers long-stay sites for lease for 30 years or more for placement or purchase of tenants’ park homes and marketed to people aged 45 years and over.

‘Long-stay tenant’ (‘tenant’): a renter or an owner-renter occupying a long-stay site in a residential park.

‘Mixed-use caravan park’: a parcel of land that contains both short-stay sites for holidays and long-stay sites rented to tenants.

‘Owner-renter’: a long-stay tenant who rents a site but owns a dwelling in a residential park.

‘Park home park’: a parcel of land that contains only long-stay sites rented to tenants.

‘Park operator’: the grantor of a right of occupancy under a residential park tenancy agreement.

‘Renter’: a long-stay tenant who rents both a site and a dwelling in a residential park.

‘Residential park’: a parcel of land that includes sites that are rented to long-stay tenants.