Government of **Western Australia**
Department of **Commerce**

CONSULTATION
DISCUSSION PAPER

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

AUGUST 2012

Although every care has been taken to ensure accuracy in the preparation of this paper, the information has been produced as general guidance for persons wishing to make submissions to the statutory review of the *Residential Parks (Long-stay Tenants) Act 2006*. The contents of the paper do not constitute legal advice or legal information and do not constitute Government policy. This paper should not be used as a substitute for a related Act or professional advice.

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MESSAGE FROM THE MINISTER

I am pleased to release this *Discussion Paper on the Statutory Review of the Residential Parks (Long-stay Tenants) Act 2006*. The purpose of the paper is to seek preliminary comment from residents, industry and other interested parties about possible reform of the tenancy laws that govern the relationship between long-stay tenants and park operators. This feedback will form the basis of formal proposals for stakeholder consideration to be outlined in a Consultation Regulatory Impact Statement that will be the next stage of this statutory review.

Historically, residential parks were considered by many Western Australians to be a short-term housing option. Over time, residential parks are increasingly being viewed as a viable form of long-term accommodation, particularly by seniors and retirees who value the facilities, communal lifestyle and sense of safety that are features of many contemporary parks. Further, residential parks play an important role in housing people working in rural and remote areas.

This Government recognises that the increasing popularity of residential parks does present a number of challenges for park residents, operators and government alike. In a competitive housing market, park residents are looking for long-term secure housing options. And park operators are looking for a regulatory environment that enables them to realise a sufficient return on investment. Finding a balance between these often competing interests has been somewhat difficult to achieve. However, this Government is committed to working collaboratively with all residential park stakeholders to improve the regulation of residential parks.

I encourage everyone in the residential parks sector to take the time to consider this discussion paper and to provide their feedback on the questions asked. Your feedback will help the Government to identify and develop workable solutions to better regulate residential parks and foster their long-term viability.

Hon Simon O'Brien MLC
MINISTER FOR COMMERCE

GLOSSARY

Caravan Parks and Camping Grounds Act 1995 (WA)	An Act, administered by the Department of Local Government, that provides for the licensing of park operators and regulates the standard of park infrastructure for the health and safety of occupiers.
Converted caravan	A dwelling that: (a) was originally manufactured as a caravan; and (b) has been structurally altered so that it has ceased to be a caravan because it is not reasonably capable of being attached to, or towed by, a motor vehicle.
Economics and Industry Standing Committee (EISC)	A WA Parliamentary Committee, which conducts reviews and reports to the Legislative Assembly regarding: (a) the outcomes and administration of the departments within the Committee's portfolio responsibilities, which includes the Department of Commerce; (b) annual reports of government departments laid on the Table of the House; (c) the adequacy of legislation and regulations within its jurisdiction; and (d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.
Fixed-term tenancy agreement	An agreement between a park operator and a long-stay tenant to rent either a site or a site and dwelling for a finite period of time.
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 are marketed to people aged 45 and over.
Long-stay tenant	A person who rents a site, and may rent a dwelling, in a residential park for at least three consecutive months as their principal place of residence.
Manufactured Homes (Residential Parks) Act 2003 (QLD) (MHRP Act)	An Act to provide for the positioning and occupancy of manufactured homes in residential parks, and for other purposes in Queensland.
Mixed-use caravan park	A parcel of land that contains both short-stay sites for holidays and long-stay sites rented to tenants.
Mobile home	Residential premises consisting of: (a) a motor vehicle that contains space for residential occupation, such as a motor home or campervan; or (b) a vehicle such as a caravan, whether on wheels or not, that is designed for residential occupation and reasonably capable of being attached to, or towed by, a motor vehicle; or (c) a vehicle designed for residential occupation that contains a structural addition or alteration (such as a flexible or rigid annexe) but which is still reasonably capable of being self propelled or being attached to, or towed by, a motor vehicle.

Owner-renter	A long-stay tenant who rents a site but owns a dwelling in a residential park.
Park home	A structure, including a converted caravan, that: (a) has the character of a dwelling; and (b) is designed to be permanently fixed to land.
Park Liaison Committee (PLC)	A group, consisting of the park operator and long-stay tenant representatives, that assists the park operator to maintain and improve the lifestyle and wellbeing of persons who use the residential park as their principal place of residence.
Park operator	The grantor of a right of occupancy under a residential park tenancy agreement.
Periodic tenancy agreement	An agreement between a park operator and a long-stay tenant to rent either a site, or a site and dwelling, for an unspecified period of time.
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.
Residential Parks (Long-stay Tenants) Act 2006 WA (RPLT Act)	An Act to regulate the tenancy relationship between a park operator and a long-stay tenant of a residential park, where the tenant either owns a dwelling and leases a site, or leases both a site and a dwelling in the park.
Residential Tenancies Act 1987 WA (RTA)	An Act to regulate the relationship between owners and tenants under residential tenancy agreements.
Residential Tenancies Act 1997 VIC	An Act to define the rights and duties of landlords and tenants of rented premises; rooming house owners and residents of rooming houses; and caravan park owners, caravan owners and residents of caravan parks; and related matters in Victoria.
Residential Tenancies and Rooming Accommodation Act 2008 QLD (RTR Act)	An Act to regulate residential tenancy agreements, rooming accommodation agreements, and related matters in Queensland.
Retirement Villages Act 1992 WA (RVA)	An Act to regulate retirement villages and the rights of residents within such villages.
State Administrative Tribunal WA (SAT)	The State Government administrative tribunal that has jurisdiction to resolve disputes under the Residential Parks (Long-stay Tenants) Act 2006.

EXECUTIVE SUMMARY

The *Residential Parks (Long-stay Tenants) Act 2006* (the RPLT Act) commenced on 3 August 2007 and there is a statutory obligation for it to be reviewed. Accordingly, the Department of Commerce has commenced a statutory review of the operations of the RPLT Act, with a particular focus on whether its regulatory framework effectively protects the tenancy rights of long-stay tenants while continuing to encourage investment in residential parks.

In response to the current statutory review, and as part of two Parliamentary inquiries into residential parks, residential park stakeholders have made a number of suggestions to better regulate the relationship between the operators of residential parks and the tenants who live in those parks for extended periods.

After canvassing the suggestions put forward by tenant groups and industry, this paper poses a number of questions on the regulation of residential park leases for stakeholders to provide feedback. These questions relate to the nine priority issues identified from preliminary stakeholder feedback.

This paper also explores additional issues such as: the impact of park owner insolvency, damage to property and violent behaviour, the future regulation of lifestyle villages and also provides an opportunity for stakeholders to comment on these issues.

This discussion paper recognises three distinct types of tenancy arrangements currently operating in Western Australia's residential parks:

- leases where the tenant rents both the site and a dwelling;
- leases where the tenant owns their own mobile home, such as a caravan and rents a site; and
- leases where the tenant owns a park home or converted caravan and rents a site, which may be for a considerable period of time such as 30 years.

Submissions to the review close Friday 30 November 2012

1. THE STATUTORY REVIEW PROCESS

THE PURPOSE OF THE STATUTORY REVIEW

Under section 96 of the *Residential Parks (Long-stay Tenants) Act 2006* (the RPLT Act) there is a statutory obligation for the operations of the Act to be reviewed as soon as practicable after five years from the commencement (3 August 2007) of the RPLT Act.

The purpose of this statutory review is to:

- identify provisions of the RPLT Act which may not be operating as intended;
- ensure that any proposals for reform meet community expectations in regard to promoting fair trading practices, particularly given that many residents are vulnerable due to their age and financial circumstances; and
- identify what changes, if any, need to be made to the RPLT Act.

While there are many issues affecting the supply and viability of parks (refer page 11 of this paper for discussion), a detailed consideration of those issues is not within the scope of this review. Rather, this statutory review focuses on the operations of the RPLT Act.

Recent reviews of residential parks legislation in Western Australia[1] have highlighted issues regarding the adequacy (or otherwise) of the current policy framework.

In its 2009 Report, the Economics and Industry Standing Committee (EISC) noted that the RPLT Act has generally not been well received by either residential park operators or long-stay tenants. Many long-stay tenants appear to be dissatisfied with the outcomes of the RPLT Act, believing it to have lessened, rather than increased, the protections afforded to them. Caravan park operators are also dissatisfied, believing the RPLT Act offers too much protection to the tenant, which makes it more difficult to contemplate offering long-stay sites[2].

The Government's primary goal is to achieve a policy framework which provides appropriate protections for long-stay tenants whilst at the same time maintaining the commercial viability of the residential parks sector.

Through this discussion paper, the Department of Commerce is seeking initial comments and feedback from interested stakeholders (including park residents, park operators and the wider community) regarding issues facing the residential parks sector and how they might be addressed.

[1] Economics and Industry Standing Committee Report into the Provision, Use and Regulation of Caravan Parks (and Camping Grounds) in Western Australia 2009.
[2] Economics and Industry Standing Committee Report 2009, page 325.

HOW TO HAVE YOUR SAY

This discussion paper outlines some questions regarding the regulation of the residential parks sector, and seeks feedback from all sectors of the community, especially current and prospective residential park tenants, and residential park operators.

Questions appear after each issue and there are general questions at the end of the paper that are designed to help you provide your feedback. You do not need to answer all the questions and you should not feel constrained by the questions. If you have other ideas on how the regulation of the tenancy relationship in residential parks could be improved, then the Department would like to have your suggestions.

It is very useful for the Department of Commerce to receive submissions which explain why you consider your suggestion is appropriate. For example:

> "I think Park Liaison Committees should not be mandatory **because** …"

This will help the Department better understand your submission and allow the Department to compare, and give appropriate consideration to, submissions made by different sectors of the community.

There is also a short survey for park operators and long-stay tenants to complete to improve the Department's understanding of how residential parks currently operate.

Where to send your feedback

The closing date for all feedback is: **30 November 2012**

Feedback can be mailed to: Residential Parks Review
Department of Commerce (Consumer Protection Division)
Locked Bag 14
Cloisters Square PO
Perth WA 6850

Or emailed to: **consultations**@commerce.wa.gov.au

Or made online at: www.commerce.wa.gov.au/consultations

How your input will be used

Feedback received from this discussion paper will help to develop possible options for reform, and assist in shaping what will be presented to stakeholders in the next stage of this statutory review, which is the release of a formal Consultation Regulatory Impact Statement (C-RIS). The C-RIS is a requirement of the Department of Treasury's Regulatory Gatekeeping Unit and applies to policy proposals for new and amending legislation that may have a significant impact on business, consumers, government or the economy.

Your feedback from the C-RIS will then help to determine what proposals are presented to the Government to reform tenancy regulation of residential parks and guide the Government's future decisions in this area.

You can keep up to date with the progress of the Department's review at www.commerce.wa.gov.au.

Information provided may become public

Please note that because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate that in your submission. As submissions made in response to this paper will be subject to freedom of information requests please do not include any personal or confidential information that you do not wish to become available to the public.

CONTEXT FOR THE REVIEW

BACKGROUND TO THE RESIDENTIAL PARKS SECTOR

Mixed-use caravan parks

Background

Since the early 1960s, Australia has enjoyed relatively high rates of home ownership[3]. Accordingly, caravan parks were developed for holiday and tourist accommodation in scenic locations, particularly along coastal areas. In choosing accommodation, holiday-makers and tourists would consider such factors as affordability and location, including proximity to picturesque tourist sights. These factors were therefore important to park operators, seeking to make a living from this service industry.

As the cost of housing continued to rise, people began to use caravan parks as a long-term affordable housing option. For some people, parks have become a long-term form of housing out of economic necessity. For others though, long-term living in parks was a conscious choice, as they were attracted to the surroundings and communal living. As the tourism industry is traditionally seasonal in nature, park operators were able to secure some level of stable income by allocating a portion of the park for longer term accommodation. Consequently, the mixed-use caravan park emerged.

As the RPLT Act covers tenancies for which the dwelling is a person's principal place of residence, the short-stay component of mixed-use caravan parks and tourist only parks are not considered as part of this statutory review.

Generally, mixed-use caravan parks have separate areas of the park allocated to long-stay and tourist sites. However, the day-to-day activities on parks are typically regulated by a set of park rules, which may vary between parks. These park rules, which apply to tourists and long-stay tenants, may include matters such as noise and motor vehicle speed restrictions, rubbish disposal and the keeping of pets in the park.

Parks as an economic option

Mixed-use caravan parks have become a source of longer-term accommodation for those who have limited alternative housing options. These tenants commonly rent both the dwelling and the site in a mixed-use caravan park. These tenants are similar to traditional tenants, as the dwelling and land are rented together. Consequently in this paper, these tenants are known as **'renters'** (category 1 tenants).

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[3] ABS 4102.0 Australian Social Trends, 2004.

For park operators, accommodating this type of tenant provides the opportunity for stable income and the flexibility to adjust the resident mix, depending on the state of the tourist and holiday markets. Renters may vary in their expectations regarding the duration of the lease agreement with the park operator. However, some renters may appreciate a degree of flexibility in the duration of the lease. Such flexibility is facilitated by the tenant renting both the site and the dwelling from the park operator. The dwelling rented from the park operator may be fully self-contained or may require that the tenant uses the park's shared facilities.

Choosing a park for location

Mixed-use caravan parks are also a convenient housing option for those who own their mobile home[4] and rent the site only. Although these tenants may move from park to park to be close to their work, for example, they may stay in any one park for more than three continuous months. These dwellings, which are the tenant's principal place of residence, may be fully self-contained or may require that the tenant uses the park's shared facilities. In this paper, these tenants are referred to as **'mobile home owner-renters'** (category 2 tenants).

Mobile home owner-renters are distinct from residents who continuously rent a site in a mixed-use caravan park, but only occupy the site for annual holidays. Residents, who are termed 'annuals,' who only occupy the site for holidays, would not regard their on-site van as their principal place of residence and are not considered as part of this statutory review.

The mobility of mobile home owner-renters also provides park operators with the flexibility to adjust the tenant mix depending on the state of the holiday and tourist markets. Mobile home owner-renters are expected to prefer some degree of flexibility in the duration of the lease agreement with the park operator.

In this paper, converted caravans are not considered to be mobile homes. Converted caravans are dwellings that have been structurally altered so that they are no longer capable of being easily moved from a residential park.

Parks for a sea change

Many older people have been downsizing their quarter acre blocks as their adult children leave home. Initially, this group moved from the cities to idyllic coastal areas and the trend was known as a sea change. These tenants are attracted to the location and communal living arrangements on parks.

These tenants commonly rent a site only on a residential park and have purchased a home in mixed-use caravan parks, such as park homes[5] or converted caravans. Park homes are usually self-contained, so tenants are less reliant on the use of the park's shared facilities. Converted caravans may or may not be self-contained.

Tenants who own a park home or converted caravan and rent a site are referred to as **'park home owner-renters'** (category 3 tenants) and are the third and final category considered in this paper. Park home owner-renters differ in their characteristics from renters and mobile home owner-renters.

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[4] Refer to the Glossary on page three for a definition of 'mobile home'.
[5] Refer to the Glossary on page four for a definition of 'park home'.

For park operators, park home owner-renters provide a source of stable, reliable income for the park. However, the reliability of this type of long-term tenant may be at the expense of some flexibility to adjust the tenant mix on the park. It is understood park home owner-renters on mixed parks would usually prefer to be offered longer term lease agreements. Anecdotally, it is understood that, prior to the introduction of the RPLT Act, this group were on informal or periodic lease agreements and this situation has not changed. However, the disclosure provisions of the RPLT Act may have crystallised the lack of security of tenure for previous park home owner-renters in mixed parks, while providing clarity to prospective and subsequent park home owner-renters.

Other residential parks

As coastal property values increase, there is a trend toward people moving to more inland locations for reasonably priced accommodation (the tree change) with good access to services and recreational facilities. These people also value communal living with other like-minded individuals, rather than tourists and holidaymakers.

Park operators have recognised this trend and increasingly parks are being established with all sites on these parks available for long-term use and no area of the park dedicated to tourist accommodation. In this paper, these parks are referred to as 'park home parks'. Park home parks are distinct from mixed-use caravan parks as they do not offer tourist accommodation. Park home parks offer varied tenancy arrangements, from periodic to longer fixed-term tenancies of up to 30 years.

Lifestyle villages

Lifestyle villages are parks which offer very long-term site rentals (thirty years or more), and as a general rule do not offer varied tenure arrangements. These parks contain dwellings that are self-contained and not easily moved.

In a lifestyle village, a person typically purchases a dwelling, either from an outgoing long-stay tenant or from a park operator, and leases a site in a lifestyle village. In this paper, lifestyle village tenants are therefore included in the third tenant category (category 3 tenants), or park home owner-renters. Operators provide this form of accommodation as it offers a source of reliable and steady income in both the short and longer terms. In addition, management of these parks is potentially less problematic than mixed use parks as they usually attract older, like-minded residents who are all using the park as their principal place of residence.

The lifestyle village model is becoming increasingly popular and has become a more specialised form of tenancy arrangement. In recognition of these developments, the future regulation of lifestyle villages is considered in the additional issues section of this paper at pages 38 to 40.

Strata titled caravan parks

The Department is aware there are nine residential parks in Western Australia that are each established in accordance with a strata scheme[6]. Strata schemes are a form of subdivision of land into lots and common property, in accordance with a strata plan. The strata titled caravan parks in WA are currently covered by the RPLT Act. Since 1 July 1997, the strata titling of caravan parks has been prohibited under the *Caravan Parks and Camping Grounds Act 1995.*

[6] Western Australian Land Information Authority, Caravan Park Ownership Data, 2008.

Although strata titled caravan parks are covered by the RPLT Act, it was originally intended that they be covered under the *Residential Tenancies Act 1987* (RTA). The reason for excluding strata titled caravan parks from the RPLT Act is that sites at strata titled caravan parks are owned by a number of individual owners rather than a single owner. The residential parks business model is based on one park owner per residential park. Each owner in a strata titled caravan park may wish to offer different tenure arrangements, and as such the RTA was viewed as the most appropriate way in which to regulate such arrangements.

Unfortunately, a drafting error resulted in the regulation of strata titled caravan parks remaining with the RPLT Act. Therefore, it is proposed that the RPLT and the RTA will be amended to give effect to the original intention that leasehold arrangements in strata titled caravan parks be covered by the RTA. Until such time, however, strata titled caravan parks will continue to be covered by the RPLT Act.

BROAD ISSUES AFFECTING THE SUPPLY AND VIABILITY OF PARKS

The Department of Commerce estimates that there are 223[7] residential parks in Western Australia. However, the number of long-stay sites is currently less certain. According to a joint survey undertaken with the Department of Local Government in 2004, there were approximately 10 000 long-stay sites in Western Australia. If it is assumed that two people occupy each long-stay site, it is estimated that there are approximately 20 000 long-stay tenants in Western Australia.

The EISC[8] drew attention to the varied pressures impacting upon the supply of caravan parks and camping grounds, including:

- the sale of caravan park land for residential housing development;
- the increasing occupancy of caravan parks by long-stay residents;
- the rising value of coastal land;
- the redevelopment of existing sites to include other forms of holiday accommodation;
- the use of caravan parks for the provision of worker accommodation; and
- the various other supply-side factors that contribute to the viability of existing parks and the potential for the development of new parks "as a legitimate and profitable land use."[9]

The EISC also drew attention to the many factors that impact upon the viability of the caravan park and camping ground industry which combine to affect the operation and maintenance of these facilities. The major factors raised in evidence to the Committee include seasonality of demand, operating costs (such as land tax, land rates, electricity and water charges), replacement of ageing infrastructure, and compliance costs.[10]

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[7] Database of residential parks in Western Australia 2012, Property and Industries Directorate, Department of Commerce.
[8] Economics and Industry Standing Committee Report 2009, page 135.
[9] Submission No.60 from Tourism Western Australia to Economics and Industry Standing Committee.
[10] Economics and Industry Standing Committee Report 2009, page 146.

The Department of Commerce believes that solutions to support the maintenance and growth of this niche housing sector are wider than this review and take into account the State's planning, housing and tourism strategies and the ageing population. These issues are not directly within the scope of this statutory review of the RPLT Act.

The RPLT Act was not developed with the intention of directly responding to the broader social, housing, tourism and planning issues associated with the use of caravan parks, or to intervene in the supply, demand or use of sites.

While the availability of residential park sites and security of tenure for long-stay tenants is recognised as a complex long-term issue, the RPLT Act regulates the tenancy relationships between tenants and park operators and, as such, cannot necessarily address broader issues affecting supply and security of tenure, for example:

- ensuring more land is made available for the development of residential parks suitable for long-term residents;
- providing alternative accommodation options for park home residents when caravan parks are sold; and
- addressing the issue of the zoning of land on which caravan parks are situated so as to ensure that the land cannot be developed for other purposes.

REGULATING RESIDENTIAL PARKS

The Caravan Parks and Camping Grounds Act (WA) 1995

While outside the scope of this statutory review, it is important to mention the role of the Caravan Parks and Camping Grounds Act (the CPCG Act) in governing the operation of residential parks generally. The CPCG Act is administered by the Department of Local Government, and provides for the licensing of park operators and regulates the standard of park infrastructure for the health and safety of occupiers.

Under the CPCG Act, each local government authority issues licences to park operators who run parks within their locality and keeps a register of licences issued. The register includes the number of short-stay sites, which cannot be occupied consecutively for more than three months, and long-stay sites, for each park.

Renewal of park licences

The CPCG Act requires park licences to be renewed annually[11]. Both park operators and long-stay tenants have expressed concern that the requirement for annual renewal of a park licence is an impediment to park operators offering tenancy agreements for periods exceeding one year. The EISC report acknowledges that mandating a minimum duration for park tenancies "may not be an option in the short-term unless there are other consequential amendments to the licensing regime...."[12]

[11] Section 8 CPCG Act, regulation 52 Caravan Parks Camping Grounds Regulations 1997.
[12] Economics and Industry Standing Committee Report 2009, page 332.

The Residential Parks (Long-stay Tenants) Act 2006 (WA)

While the CPCG Act regulates infrastructure within caravan parks, as previously indicated the purpose of the RPLT Act is to regulate the tenancy relationship between the park operator and a long-stay tenant of a residential park, where the tenant either owns a dwelling and leases a site, or leases both a site and a dwelling in the park.

The RPLT Act applies to a person who:

- rents both a dwelling and a site within a park for three months or more;
- rents a site within a park for three months or more, and either brings onto the site a dwelling they own, or purchases a dwelling on-site;
- entered into a periodic tenancy agreement before 3 August 2007;
- had a written, fixed-term agreement that had expired or was extended on or after 3 August 2007; or
- entered into an oral tenancy agreement before 3 August 2007.

The RPLT Act does not apply to:

- holidaymakers;
- current employees of the park living on the premises;
- retirement villages as defined and covered under the *Retirement Villages Act 1992* (WA); or
- individuals who entered into written fixed-term tenancy agreements before 3 August 2007.

The RPLT Act focuses on the contractual relationship between park operators and tenants. In doing so, it seeks to balance the needs of residential park residents for security of tenure while supporting the maintenance of existing, and the development of new, residential parks.

Prior to the enactment of the RPLT Act park tenancies were regulated by the *Residential Tenancies Act 1987* (WA) (RTA). Over time, it was acknowledged that some parks provide long-term residential accommodation, and as such it was determined that there was a need for discrete legislation to regulate rental agreements in caravan parks. While the RPLT Act is underpinned by the principles of the RTA, it was introduced to separately regulate residential park tenancies.

Throughout this discussion paper the various provisions of the RTA, and particularly recent amendments that have been made to the RTA, are discussed to help readers understand particular issues and consider possible responses. The similarities between the two pieces of legislation may have particular relevance to those tenants with shorter duration leases, such as renters (ie category 1 tenants), as there may be some benefit in introducing similar provisions of the RTA into the RPLT Act.

2. ISSUES RAISED IN THIS REVIEW

Background

In developing this discussion paper, the Department conducted policy research and consulted key stakeholders to better understand the issues facing the residential parks sector and identify any gaps in the existing regulation. This preliminary work involved:

- analysing WA complaints data and reviewing recent Parliamentary inquiries in residential parks, as well as considering correspondence received by the Department of Commerce about park living;
- meeting with key stakeholders, namely the Caravan Industry Association, the Park Home Owners Association and the Council on the Ageing WA, and analysing written submissions from them;
- meeting with the Department's operational areas that deal with complaints and queries from park operators and tenants and who undertake proactive compliance visits to residential parks; and
- considering reviews undertaken, and the laws of, other Australian jurisdictions.

Stakeholder issues

This research and consultation revealed nine priority issues that stakeholders would like the Department to consider as part of the statutory review, these being:

1. security of tenure, including without grounds termination and owner initiated sale of a park;
2. compensation;
3. disclosure;
4. rent variation;
5. fees and charges;
6. sale of homes on-site:
7. dispute resolution;
8. Park Liaison Committees; and
9. maintenance and capital replacement.

The nine issues are the areas that stakeholders believe could be addressed more effectively in the RPLT Act. In order to help readers better understand the nature of each of these issues, set out below is a short summary of each issue and what stakeholders have told the Department concerns them about how that issue is dealt with in the current legislation. The summaries indicate where known what is likely to be the preferred outcome for each of the stakeholders. Questions are then provided to assist stakeholders to provide feedback on each of the issues.

Additional issues

Three additional issues were also identified, these being:

1. the impact of park owner insolvency;
2. damage to property and violent behaviour; and
3. the future regulation of lifestyle villages.

A summary of each of the additional issues and questions is provided on pages 34-40.

OUTLINE OF STAKEHOLDER ISSUES

1. SECURITY OF TENURE

(a) 89-day rolling contracts (outside RPLT Act)

Current situation:

The RPLT Act covers tenancy agreements that are not entered into for the purpose of a holiday that are:

- for a fixed-term of three months or more; or
- for a periodic agreement that continues for three months or more.

Tenancy agreements that are less than three months (90 days) in duration are not covered by the RPLT Act. This enables short-term holiday-stays at a residential park to be entered into without imposing on a park operator the increased regulatory burden that accompanies long-stay agreements.

However, it has become evident that there are some park operators offering tenancy agreements to long-stay tenants on the same basis as short-term holiday stays. Rather than a long-stay tenancy agreement, tenants are being offered rolling 89-day contracts in order to avoid the lease agreement being subject to the provisions of the RPLT Act.

Issue:

89-day rolling tenancy agreements are not covered by the RPLT Act. However, it was always intended that the RPLT Act would extend to all non-holiday stays at a residential park.

Implications:

This issue predominantly affects renters and mobile home owner-renters, meaning that these tenants who enter into rolling 89-day contracts do not have access to the following safeguards:

- restrictions regarding the taking, placement and disposal of a security bond;
- minimum statutory notice periods to end a tenancy and associated compensation for costs where these apply; or
- access to established dispute resolution procedures.

(b) Security of Tenure – termination of tenancy

Complaints received by the Department of Commerce for the period 2007 to 2011 show that issues surrounding the termination of long-stay tenancies form the single biggest category of complaints made to the Department (18% of complaints).

Many owner-renters of caravans and park homes have an expectation that they will live in a park for their lifetime when the reality is that some of them may have to move. Many too believe that this expectation should be reflected in a fixed term lease of extended duration.

Current situation:

There are a variety of circumstances contemplated by the RPLT Act in which a tenancy may be terminated early by either of the parties, the most contentious being:

Without grounds

The RPLT Act provides that a park operator may give a notice of termination to a long-stay tenant to terminate the long-stay agreement without grounds. The notice of termination must not require vacant possession before 60 days have passed for renters on periodic agreements; 180 days for owner-renters on periodic agreements; and not before the end of the term for those tenants on fixed-term agreements.

Issue:

Some tenant representatives have requested that residential park leases be 'open-ended' whereby they could not be terminated except by the mutual agreement of the parties or by an order of the SAT. Other tenant representatives have requested that mandatory minimum fixed term tenancy agreements be prescribed, whereby the tenancy could only be terminated on specific grounds during the lease. This proposal would mean that all long-stay tenants in a residential park would have the option of a fixed term tenancy for a minimum period that would be set out in the parks legislation eg 5 years.

Park operator representatives have stated that the ability to terminate a tenancy without grounds provides a mechanism for a park operator to terminate a tenancy when required for business reasons, including altering the ratio of tourists and long-stay tenants on mixed parks.

Park operators have also stated the conditions under which they operate a park, including their commercial lease arrangements and/or the annual licensing requirement under the CPCG Act, may constrain the duration of the tenancy agreement that can be offered to tenants.

Implications:

The ability to terminate a tenancy without grounds provides both parties with a degree of flexibility to respond to unforeseen circumstances. However, anecdotal evidence suggests some tenants, particularly owner-renters, are being offered periodic tenancy agreements despite preferring to enter fixed-term tenancy agreements with an option to renew upon expiry. Tenants who are given notice to leave without grounds may find it difficult to find another park in which to relocate, particularly if the tenant is seeking a fixed term tenancy agreement.

It may also be costly for tenants to leave, particularly owner-renters who incur additional exit costs in having to move their dwelling off-site or sell their dwelling. Relocating a park home may involve disassembly and removal by crane onto a truck for transportation and subsequent reassembly onto a new residential park. As owner-renters require a vacant site that is capable of accommodating their dwelling, they are more limited in the housing options open to them when compared to traditional residential tenancies. In addition, some dwellings, particularly mobile homes, may have deteriorated in condition to the extent that they are incapable of being moved.

Upon sale of the park

This section deals with the situation where a park owner, other than a lifestyle village owner, agrees to sell their park clear of occupants and of objects which are not included in the sale ie they offer vacant possession. Unlike lifestyle villages where the parties agree at the outset to a tenancy agreement of 40 years or more, other park operators offer agreements ranging from periodic agreements to fixed term agreements. These terms vary depending upon the circumstances of each of the parties. The regulation of the sale of a lifestyle village is considered later in this paper at pages 38-40.

In recognition of an owner's right to sell their park, the RPLT Act provides that a park operator may give a notice of termination to a long-stay tenant on the grounds that the park operator has entered into a contract for the sale of park premises and is required under the contract to give vacant possession.

The situation under consideration involves a park owner who **voluntarily** wishes to sell the park. If a park owner (or entity) is unable to pay their debts, including the mortgage on the park, the mortgagee may seek to obtain possession and sell the park to repay the loan. The issue of park owner insolvency, and the rights of long-stay tenants when a park is sold in this situation, are considered in the additional issues section on pages 34-36.

The current situation is also distinct from the situation where the park owner sells the park to a purchaser who wishes to continue to operate the residential park ie sale as a going concern. In this case, the new purchaser would take over the leases with the long-stay tenants and be required to comply with the terms of those leases and the provisions of the RPLT Act.

Issue:

Tenants on both fixed-term and periodic tenancy agreements may have their agreements terminated if the park is sold subject to vacant possession. In the case of fixed-term tenants, even if their contract provides for a long lease term, a park operator can still terminate their lease on giving 180 days notice.

As park operators purchase residential parks as a business they perceive they are entitled to sell, and realise a return on, their investment on terms that are acceptable to them.

Implications:

This is a particularly significant issue for tenants who are owner-renters, as there have been a number of park closures since the commencement of the RPLT Act. Tenants who are given notice to leave may find it difficult to find another park in which to relocate that is affordable and close to services. The costs of relocation when a park is sold are considered under the heading 'Compensation' in the next section.

However, putting onerous conditions on a park operator's ability to sell a park may affect current and future private investment in residential parks, particularly mixed-use caravan parks, and may require tenants to pay more up-front to enter lifestyle villages.

Also, changing current tenure arrangements so as to prevent termination of a long-stay agreement where the owner wishes to sell the park may have the potential to trigger park closures and therefore fewer long-stay sites being available. This option would likely require a substantial review of the residential parks business model. The current RPLT Act expressly permits a park owner to sell the park and offer vacant possession despite the existence of long fixed term leases. Removing

the ability to terminate a tenancy agreement where the park is sold subject to vacant possession may make residential parks a less attractive investment as it limits the range of potential future purchasers.

Below is the likely position of each of the stakeholders regarding early termination:

- Park operators want continued flexibility to manage their commercial arrangements and adapt to changes in market conditions.
- Owner-renters want fixed-term leases of significant duration to provide secure tenure that are not overridden by changes in park ownership.
- On the whole renters, while preferring ongoing tenure, are not expected to be strongly dissatisfied with the current arrangements.

(c) Security of Tenure – death of a tenant

During the research phase of this statutory review, issues arising from the death of a long-stay tenant were raised for consideration.

Death of a sole long-stay tenant

One issue identified is the potential liability of a sole tenant's estate for the unexpired term of the lease when the tenant dies. Other jurisdictions have provisions to limit the liability of a deceased sole tenant's estate. However, the RPLT Act does not address this issue.

Death of one of a number of long-stay tenants

Another related situation that may not be contemplated by the parties, but which may create uncertainty, is where a long-stay tenancy agreement exists between a park operator and long-stay tenants that are not joint tenants under the agreement and one of the tenants dies. While the RPLT Act does not have specific provisions, the RTA has recently been amended to:

- provide that the deceased tenant's interests in the residential tenancy agreement cease from death, without affecting the rights and liabilities as they existed prior to death; and
- provide for the continuation of a residential tenancy agreement between the remaining tenant(s) and the owner.

(d) Security of Tenure – recognition of a tenant

Unlike the above situation where the people staying in the residence are all named on the lease document, there may be a situation where a long-stay tenant and another person, relative or de facto partner, co-habit 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.

While the RPLT Act does not have specific provisions, recent amendments to the RTA include:

- recognition of a minor (a person who is at least 16 years of age, but has not yet reached 18 years of age) for the purpose of entering into, and enforcement of, a residential tenancy agreement; and
- providing for a person who has been residing in premises, but is not a tenant such as a relative or de facto partner, to apply to the formal dispute resolution body, the State Administrative Tribunal (SAT) for an order to recognise the person as a tenant (on such terms as appropriate in the case) and/or to join the person in relevant proceedings.

BOX 1: QUESTIONS ON SECURITY OF TENURE

1. Should park tenancy laws extend to all non-holiday stays at residential parks, including 89-day rolling contracts? Please give your reasons.

2. Should there be a minimum lease period to satisfy owner-renters who want substantial fixed term agreements? If yes, what should the lease period be? Please give your reasons.

3. What impact would mandating minimum lease periods (eg 5 years) for all long-stay agreements have on the supply of long-stay sites and the viability of residential parks generally? Please give your reasons.

4. Rather than mandating minimum lease periods, do you think there would be less impact on industry if the compensation provisions of the RPLT Act were amended so as to apply to an owner-renter irrespective of whether they have a fixed term or periodic lease? If yes, why? If no, why not?

5. Should without grounds termination of periodic tenancies be retained? If yes, why? If no, why not?

6. Would you support the retention of without grounds termination if longer notice periods were required to be given before terminating a periodic tenancy? What should the notice periods be? (refer page 16 for discussion). How would this affect you?

7. Should park tenancy laws prevent the termination of a fixed-term agreement when a park is being sold? If yes, why? If no, why not?

8. To what extent should a tenant's estate be liable for the remainder of the lease when a tenant dies? What do you see as the benefits and costs of this option?

9. What changes, if any, are required to recognise tenants who are not parties to the tenancy agreement?

2. COMPENSATION

Current situation:

The RPLT Act currently provides that:

- a long-stay tenant must be compensated for relocation costs incurred when a park operator terminates a fixed-term agreement early when:
  - a park operator voluntarily sells a residential park subject to vacant possession;
  - a tenancy agreement is frustrated, which occurs when the rented premises or shared premises becomes uninhabitable or unusable otherwise than as a result of a breach of the tenancy agreement. Examples include floods or compulsory acquisition; and
  - a park operator obtains an order from the SAT, that the park operator would suffer undue hardship if required to terminate the agreement under any other provision of the RPLT Act;

- the payment of compensation does not extend to the termination of periodic tenancies by a park operator nor to the situation when a fixed term agreement expires without renewal; and
- there is no right to compensation when a long-stay tenant is required to move within a park.

Issue:

There are a number of issues that relate to the payment of compensation for relocation costs incurred when a park operator terminates a long-stay agreement early.

Firstly, there is no right to compensation when a fixed term agreement expires without there being an option to renew. While owner-renters who have a fixed term tenancy with no option to renew would understand that their living arrangements are uncertain at the end of their lease, they may not have budgeted for a move off the park.

Secondly, the compensation provisions do not apply to tenants with periodic agreements in place. The different treatment of fixed term and periodic leases on the issue of compensation is a significant part of what makes the fixed term agreement attractive to tenants and unattractive to operators.

Thirdly, the current provisions do not take account of the length of time a person has been residing at the park in determining whether compensation is payable. A long-stay tenant may have spent money to improve their site, with the park operator's consent, which may add to the overall attractiveness of the park. In such cases, tenants may expect that, regardless of whether the agreement is periodic or for a fixed-term, that the park operator will compensate them if the lease is terminated.

On a related matter, the RPLT Act does not provide for compensation to cover either the tenant's costs in moving their dwelling or re-couping the value of any improvements that may have been made to their current site when the park operator requires the tenant to move within a park.

Fourthly, the provisions of the RPLT Act which set out the factors the SAT may have regard to in determining the amount of compensation to be paid do not expressly take into account the situation where a long-stay tenant is unable to secure a site in another residential park; or the situation where the tenant's dwelling has been situated on a particular site for an extended period and it is no longer possible to relocate the dwelling.

Implications:

Owner-renters who have a fixed-term tenancy would expect that their living arrangements would be reasonably settled for the term of their lease and may not have budgeted for a move either within or off the park.

Recent park closures may also suggest that owner-renters could find it increasingly difficult to secure a site in another park when their current lease ends. Even where a long-stay tenant has the funds necessary to relocate to a new park, there may not be alternative long-stay accommodation available.

Owner-renters on periodic leases, and those on fixed-term leases with no option to renew, have the uncertainty of not knowing how long they will be living in the park and sole responsibility for all their moving costs should their lease be terminated by the park operator.

Park operators may not consider that it is reasonable to require them to compensate owner-renters on periodic leases or those on fixed term leases with no option to renew as the very nature of these agreements are such that the right to occupy a site on the park is for a short and/or finite period of time, with no commitment being made to provide the current or another site after this period.

Also, park operators may not consider that it is reasonable to require them to compensate an owner-renter for their additional relocation costs where the tenant has failed to maintain a dwelling in a condition which allows it to be moved off the park. The tenancy agreement only provides for the tenant to lease the site for an agreed period and does not grant any further proprietary rights.

Below is the likely position of each of the stakeholders on this issue:

- Park operators want to minimise their obligations to pay compensation for the early termination of a fixed-term tenancy and do not wish to extend the liability for compensation payments to periodic leaseholders and those at the end of a fixed term lease.
- Owner-renters want a prohibition on early termination of fixed-term agreements, including the situation when a park is sold, or at the very least to be adequately compensated for the costs of moving off the park.
- Long term owner-renters, whether on periodic leases or on fixed-term leases with no option to renew, want to be compensated for the costs of moving off the park.
- Mobile home owner-renters may also want restrictions on being moved within the park.
- On the whole, renters are not expected to be strongly dissatisfied with the current arrangements.

BOX 2: QUESTIONS ON COMPENSATION

1. On what basis (if any) would you support the payment of compensation by park operators who terminate a **periodic tenancy**? Please give your reasons.

2. If compensation were to be payable for the early termination of a **periodic tenancy** by a park operator, what factors should be taken into account in determining how much compensation is to be paid?

   - ☐ Where a tenant has made improvements to their site with the consent of the park operator.
   - ☐ Where a tenant has been in occupation of the site for a long time (please suggest a minimum period of time).
   - ☐ Where the park operator is requiring a tenant to relocate within the park.
   - ☐ Other, please specify.
   - ☐ None of the above.

3. For the early termination of a **fixed-term tenancy**, what additional factors should be taken into account when determining how much compensation is to be paid?

   - ☐ Where a tenant has made improvements to their site with the consent of the park operator.
   - ☐ Where a tenant has been in occupation of the site for a long time, such as in a lifestyle village (please suggest a minimum period of time).
   - ☐ Where the tenant cannot locate an alternative site.
   - ☐ Where the tenant's dwelling is incapable of being moved.
   - ☐ Other, please specify
   - ☐ None of the above.

4. Should a park operator pay compensation for relocating a tenant within a park? If yes, why? If no, why not?

5. Are there any other changes to the park tenancy laws regarding compensation that you believe are necessary?

6. What impact would there be on the supply of long-stay sites and the future viability of residential parks if the payment of compensation was extended to such things as relocating within a park or where a tenant's dwelling is incapable of being moved? Is shared relocation costs an option in some circumstances?

3. DISCLOSURE

Complaints received by the Department of Commerce for the period 2007 to 2011 indicate that issues around written agreements form the second biggest category of complaints made to the Department (14% of complaints).

Current situation:

Before a park operator makes a long-stay agreement with a person, the RPLT Act requires the park operator to provide the person with various documents and information, including a copy of the proposed agreement (including an explanation of how and when the rent may be varied); a copy of the park rules; and a written schedule of fees and charges currently payable by a long-stay tenant to the park operator.

Issues:

If a prospective tenant is not provided with appropriate disclosure documents they may be buying into a situation they do not fully understand. Of upmost importance is that long-stay tenants understand that the situation in which they are buying is not necessarily a permanent situation.[13]

Park operator representatives have reported that many people simply do not read the disclosure material when it is provided. This point was also made in the 2009 EISC Report[14].

Furthermore, in its report the EISC commented that in evidence given to the Committee, many long-term tenants believe that even though they bought into a caravan park with the benefit of full disclosure regarding the relative insecurity of tenure offered in that park, they should be offered longer-term fixed leases.[15]

Implications:

Being provided with substantial disclosure documents is no guarantee that the tenant will either read or fully understand all of the terms and conditions of their lease. Some owner-renters may not understand the implications of restrictions that may apply on an assignment of their lease. Any or all of these factors may impact upon a person's decision as to whether to rent a site in a particular park or not.

If tenants are not reading the disclosure material already provided, it may not be worthwhile to place an additional burden on park operators to provide further disclosure material. Alternatively, the type of information and the way it is communicated may need to be improved.

Other issues raised with the Department include whether park operators should disclose information about whether they lease or own the park, the terms of their commercial lease (where relevant) and the park operator's intentions regarding the future of the park.

Below is the likely position of each of the stakeholders on this issue:

- All tenants want clearer and more concise documentation outlining the rights and obligations of the parties.
- Park operators want the administrative burden eased and may find it costly to produce additional information.

[13] Economics and Industry Standing Committee Report 2009, page 343.
[14] Economics and Industry Standing Committee Report 2009, page 277.
[15] Economics and Industry Standing Committee Report 2009, page 277.

BOX 3: QUESTIONS ON DISCLOSURE

1. Please indicate your view, by ticking the appropriate boxes, regarding the adequacy of the current information required to be disclosed:

	Too much Information	Too little information	Good	Unsure
Proposed agreement	☐	☐	☐	☐
Information booklet	☐	☐	☐	☐
Property condition report	☐	☐	☐	☐
Copy of the park rules	☐	☐	☐	☐
Information sheet	☐	☐	☐	☐
Park Liaison Committee Guidelines	☐	☐	☐	☐

2. What are the 3 most important things that tenants need to know from the park operator about leasing a site in a residential park?

3. What are the 3 most important things that park operators need to know from the tenant about leasing a site in a residential park?

4. RENT VARIATION

Current situation:

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

For renters with fixed-term agreements providing for rent to be varied, and periodic agreements, tenants must be given at least 60 days notice of a rent increase. However, the minimum interval between rent increases is six months[16]. These provisions can be excluded or limited by the parties.

For mobile home owner-renters and park home owner-renters, rent can be reviewed in accordance with the tenancy agreement. The rent can only be increased at minimum intervals of 12 months[17]. In addition, the agreement can only specify a single basis for calculating the rent payable on and after the review date, although the agreement can specify different bases for calculation for different review dates.

Long-stay tenants can apply to the formal dispute resolution body, the SAT for a determination of the amount of rent payable under a long-stay agreement, having regard to the terms of the agreement. Tenants can also apply to the SAT for an order reducing the amount of rent payable if the rent is deemed excessive due to a reduction of benefits provided or where they can provide evidence the park operator was motivated in whole or in part to terminate the tenancy.

[16] The first rent increase may be less than 6 months if done in accordance with a rent review schedule disclosed in a written notice to the tenant before the agreement is signed.
[17] The first rent increase may be less than 12 months if done in accordance with a rent review schedule disclosed in a written notice to the tenant before the agreement is signed.

Issue:

Frequent, large or unpredictable rent increases can have a significant impact on park tenants, many of whom are elderly, unemployed or retired, or if in the workforce, in lower paying occupations. Retirees, pensioners and seniors are often on fixed incomes, and tenant representatives have stated a preference for the RPLT Act to mandate only the use of rent review methods that are linked to cost of living increases, such as the Consumer Price Index (CPI).

Tenants who are concerned about the rent payable may also be reluctant to take the matter to the SAT, particularly in arguing that rent is excessive, as providing evidence may require a considerable amount of time and effort and tenants lack access to park expenses and financial documentation.

Park operators require the continued capacity to budget and achieve a commercially viable return on their investment in the park. Park operator representatives have noted the CPI measure does not necessarily reflect the level of increase in costs relevant to running a park. For example, rates and charges often increase at a rate higher than CPI.

Implications:

Even with the current minimum notice periods of an increase in rent, it may be difficult for tenants on fixed incomes to absorb an increase if it is more than the amount by which their fixed income increases each year.

However, balanced against the tenants' limited ability to absorb rent increases is the need for park operators to have flexibility around rental increases, as it is one of the few measures available to them with which to effectively manage a reduction in revenue and/or an increase in costs. If parks become unprofitable and park owners experience financial difficulties, the park may be sold and redeveloped, which would affect the tenure of existing long-stay tenants. Restricting rents may also reduce the investment value of residential parks and investment in the residential parks market which could also reduce the accommodation options of existing and prospective long-stay tenants.

In its report 'Statutory Review of the *Residential Tenancy Act 1987 (WA)'*, Stamfords Advisors and Consultants recommended that the Residential Tenancy Act not be amended to prescribe a maximum allowable rent increase, either directly (by way of a stated maximum percentage increase) or indirectly (by link to the CPI or other index). The report noted that the appropriateness of a rent increase depends on many factors, including the current rent paid, current market rent, and whether any improvements have been made to the premises. The imposition of a prescribed allowable increase would not take into account such factors.

In its response to the Stamfords Report, the then Department of Consumer and Employment Protection proposed that there be no introduction of rent level setting or capping in the Residential Tenancy Act as-

> "…such regulation would act as a disincentive to investment and have a detrimental impact on both property owners and tenants in terms of property values and availability of housing stock to rent."[18]

[18] *Review of the Residential Tenancies Act (1987) WA – Policy Position Paper January 2008*, Department of Consumer and Employment Protection, page 84.

Below is the likely position of each of the stakeholders regarding rent:

- Park operators want continued flexibility so they are able to respond to market conditions.
- Tenants want a minimum notice period in order to plan for a rent increase and for that increase to be fair.
- Tenants on fixed incomes want rent increases minimised and possibly linked to increases in their income, such as the CPI.

BOX 4: QUESTIONS ON RENT VARIATION

1. What changes, if any, are required to park tenancy laws fixing the frequency of rent increases that apply over the term of a lease? What would be the effect on industry of such laws and why? (eg. Higher rents to cover costs that cannot be recovered between rent reviews).

2. Should the parties be freely able to negotiate rent increases payable over the term of the tenancy agreement or should park tenancy laws provide for a fixed method of varying rent? Why or why not?

   (Note: a fixed method of varying rent is unlikely to enable a tenant to negotiate a reduced rent in the event that market conditions softened).

3. How should the lease agreement address unforeseen costs? Please provide reasons to support your view.

5. FEES AND CHARGES

Current situation:

Apart from rent and a security bond, the RPLT Act permits the charging of:

- an option fee;
- any amount authorised by another provision of the RPLT Act; and
- any prescribed fees.

Examples of the fees and charges provided for under the RPLT Act include:

- letting fees payable to real estate agents who provide services on behalf of a park operator in connection with letting premises or entering into tenancy agreements;
- the responsibility to pay rates, taxes and charges, which may be excluded, modified or restricted;
- the cost of preparing a long-stay agreement, which may be determined by agreement; and
- the charging of a commission associated with the selling of a home on-site, which is discussed under the heading ‘Sale of Homes On-site’ in the next section.

The Residential Parks (Long-stay Tenants) Regulations 2007 set out the types of fees and charges which a park operator can require a tenant to pay in addition to rent and a security bond. These include visitor fees, utilities, internet, gardening, storage services, additional parking spaces, servicing of an air-conditioning unit used by the tenant, cleaning of gutters and a fee for a park operator (who is not acting as the selling agent) to screen the suitability of prospective purchasers of a home owned by a tenant.

Before a park operator makes a long-stay agreement with a person the RPLT Act states that they must provide the person with a written schedule of fees and charges showing the nature and amount of all fees currently payable by tenants to the park operator and an updated schedule where any new agreements are made during the term of the lease. Either party to a long-stay agreement can also apply to the SAT for relief if a dispute arises in connection with any payment to be made under a long-stay agreement.

Issue:

During preliminary consultation, tenant representatives have expressed concern about the charging of visitor fees and administration fees. The charging of administration fees is discussed under the heading, 'Sale of Homes On-site' in the next section.

In relation to visitor fees, some long-stay tenants have stated that even where they are in fully self-contained accommodation, some park operators are charging the tenant a fee as much as $25.00 for overnight guests.

The question of what are reasonable fees and charges is at issue and how these disputes can be resolved. For instance, tenants and their visitors who do not use shared facilities of the park claim that charging for overnight guests is not justified. However, park operators need to be able to cover costs and to make provision for the maintenance of facilities.

Implications:

The charging of overnight fees where shared facilities are not used is a major issue for those tenants who require a carer to stay overnight or who have family who visit regularly. Tenants on fixed incomes would find it difficult to pay this fee in addition to their rent payments.

Park operators want continued flexibility to recoup both the actual costs of using shared facilities as well as the costs involved in maintaining and upgrading them. An inability to maintain/modernise facilities could negatively impact the value of the residential park.

Below is the likely position of each of the stakeholders on this issue:

- Park operators want continued flexibility to recoup the costs involved in maintaining and upgrading shared facilities so as to ensure the long-term viability of the park.
- Tenants want fees and charges that reflect the actual cost incurred in providing those services.

BOX 5: QUESTIONS ON FEES AND CHARGES

1. Are there any fees and charges that you believe should be either prohibited or included in the park tenancy laws? For those you would like included, is there a better method/basis for their calculation? Please provide reasons to support your view.

6. SALE OF HOMES ON-SITE

(a) Ability for a tenant to sell a home on-site

Current situation:

Under the RPLT Act, a long-stay tenant is entitled to sell a dwelling owned by the tenant while it is in place in the park, unless the tenancy agreement expressly provides that on-site sales are prohibited.

A park operator would be in breach of the RPLT Act if he or she charged a long-stay tenant who purchases a dwelling on-site an administration fee that is not rent or a security bond, for or in relation to entering into long-stay agreements.

Issue:

The sale of caravans and park homes continues to be a 'bone of contention' amongst stakeholders. Park operators want to retain the discretion to determine whether or not a tenant may sell on-site and consequently, who enters the park, to ensure prospective tenants are a good fit for the park.

The Department is aware park operators may have charged administration fees of up to $30,000 to sellers of on-site dwellings. It is understood this fee is added to the price of an on-site dwelling and paid upon settlement of the on-site home.

Park operators have stated that a portion of the value achieved from a sale of a dwelling on-site could be attributed to the attractiveness of the park overall and its facilities and so they are entitled to a share of the sale.

Implications:

The key issue is the extent of involvement and benefit the park operator should have in the sale of a tenant's dwelling on-site. Since the new owner's occupancy is determined by a lease, the purchaser of a dwelling will be a new site tenant and so their right of occupancy needs to be approved by the park operator. The new site tenant also needs to be aware of the conditions of the lease to which they will be subject. Park operators believe they should be able to determine reasonable fees and charges associated with such sales.

The charging of such fees could have a major financial impact on a long-stay tenant. Where the fee is charged to the purchaser, the prospective long-stay tenant would have to find extra funds to pay the fee in addition to the purchase price of the dwelling. Fees may also lengthen the time it takes to sell a dwelling due to the higher sale price, and therefore could also have a major financial impact on an outgoing tenant who is selling their residence. Alternatively, if the administration fee is borne by the prior owner their proceeds from the sale may be significantly less.

Tenant representative groups have requested that the practice of charging sales fees or fees associated with moving be expressly prohibited in the RPLT Act.

Below is the likely position of each of the stakeholders on this issue:

- Park operators want the continued flexibility to determine who may live in a residential park and how tenant-owned dwellings are sold on their property, including the right to determine reasonable fees and charges associated with such sales.
- Owner-renters want a legislative right to sell their dwelling on-site.
- New tenants do not want to be charged fees on top of the purchase price for the dwelling.

- Tenants who sell their dwelling do not want to be charged a fee that will reduce their sale proceeds.

(b) Park operator as the selling agent

Current situation:

The park operator may act as the selling agent if there is a written agreement between the tenant and the operator which allows this. The RPLT Act exempts park operators from the requirement to be licensed as a real estate agent or a motor vehicle dealer when acting as a selling agent under a selling agency agreement.

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; and
- 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.

Issue:

Park operators state that they should have the right to control the sale of caravans and park homes in their parks. In its submission to the 2009 EISC Inquiry, the Caravan Industry Association of Western Australia stated that an inability to control the sale of caravans and park homes has meant that –

> *"consumers are able to enter into contracts for the purchase of a caravan or park home with third parties before they receive proper advice on tenancy arrangements from the owner/manager of the park within which the caravan park or park home is located ... the purchaser can incorrectly assume (or is incorrectly advised by the seller) that existing tenancy rights are provided*."[19]

However, tenants have stated that allowing the park operator to be the sole selling agent can result in unreasonable commissions and a lack of transparency.

Tenant representative groups have also expressed concern about the potential conflict of interest in allowing the park operator to be the selling agent. They state that in the scenario where a park operator is selling a new park home and has a number of occupied homes for sale, it is likely that the park operator would attempt to sell the new home first as they would continue to generate an income while the occupied homes are on the market.

Tenant groups have also expressed concern about park operators becoming *de facto* real estate agents, when they are not required to be licensed as such. However, it is noted the sale of park homes is a specialised market and real estate agents may not have the desire or expertise to operate in this area.

Below is the likely position of each of the stakeholders on this issue:

- At the very least, park operators want to be involved in the sale of caravans and park homes in their park.
- Owner-renters want to be able to decide who will act as their selling agent.

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[19] Submission No. 65 from Caravan Industry Association of Western Australia, to EISC Inquiry 2009.

BOX 6: QUESTIONS ON SALE OF HOMES ON-SITE

1. What changes, if any re required to the current provisions in the RPLT Act that provide for the sale of a tenant's dwelling on-site to be determined by negotiation between the parties?

2. What fees do you think should be payable to a park operator when a tenant sells their dwelling on site and the park operator does not act as selling agent?

4. What fees do you think should be payable when a tenant sells their dwelling on site and the park operator acts as selling agent?

5. If a park operator is not the selling agent, how much involvement should a park operator have in the sale of a tenant's dwelling on-site? eg. screening tenants.

6. Should park tenancy laws require that a tenant, as a condition of the sale of their dwelling, obtain the written consent of a park operator to the transfer of the lease agreement and also provide the purchaser with a copy of the tenancy agreement? If yes, why? If no, why not?

7. Should park tenancy laws expressly prohibit the charging of administration fees to purchasers of dwellings on-site for or in relation to entering into a long-stay agreement? Please provide reasons to support your view.

7. DISPUTE RESOLUTION

Current situation:

The SAT is the review body established under the RPLT Act to hear disputes that arise under or in connection with a long-stay agreement, including an agreement for an option to enter into a long-stay agreement and a selling agency agreement. Selling agency agreements are discussed under the heading 'Sale of Homes On-site" in the previous section.

Issue:

Stakeholder groups have stated that the SAT is not readily accessible to those outside the metropolitan area as its central location makes it difficult for parties in regional areas to appear before it. They also state that the SAT's application fees and other charges are cost prohibitive.

The application fee for bringing a matter before the SAT is $68.00. The hearing fee (for each day or part of a day allocated, other than the first day) for an application by a person is $135.50. In contrast, for a residential tenancies claim not exceeding $10,000 in the Magistrates Court, there is a filing fee of $26.70 or $19.50 for a financially disadvantaged person.

The Magistrates Court is considered by some stakeholders to be a more effective and less costly dispute resolution mechanism than the SAT. It also has courts across Western Australia, which stakeholders have indicated is an advantage for those who wish to personally appear but who live outside Perth rather than using teleconferencing. However, the SAT has developed expertise in dealing with this unique form of occupancy. In its 2010-11 Annual Report, the SAT recorded that it had received 35 applications during the year regarding RPLT Act matters.

Implications:

If a dispute resolution forum is not accessible and accepted by stakeholders, residents and management may find it difficult to resolve a dispute which is vital in a communal living situation.

Below is the likely position of each of the stakeholders on this issue:

- Park operators and tenants want access to a timely, cost effective and convenient dispute resolution process. They also require that the mechanism has expertise in this unique form of lease.

BOX 7: QUESTIONS ON DISPUTE RESOLUTION

1. Should the State Administrative Tribunal (SAT) continue to be the review body for all disputes involving long-stay tenancy agreements? If yes, why? If no, why not?

8. PARK LIAISON COMMITTEES

Current situation:

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.

Issue:

Tenant representative groups have stated that while there are positive examples of PLCs operating well with the cooperation of tenants and management, there are also many parks where the PLC is perceived to be ineffective due to a lack of information, or at times apathy, or in a worst case scenario, being actively discouraged.

Park operator representatives have claimed that forcing the park operator to convene and maintain a PLC places too great a burden on the park operator, particularly as many tenants are either unable or unwilling to become involved in the PLC process. This is a factor that may be more evident in smaller parks where there are fewer tenants to call on. It is noted however, that the Act does provide a defence to prosecution where the park operator took all reasonable steps to convene and maintain a PLC.

Implications:

An effective PLC process improves the capacity of a park operator to deal with issues arising in a park and facilitates the exchange of information generally with long-stay tenants. It appears the satisfaction of operators and tenants is greater where there are effective committees in place.

Other jurisdictions, including New South Wales, Queensland and Victoria, provide for a residents' committee to facilitate communication with the park operator in a manner determined by the committee. Unlike a park liaison committee, which contains representatives of both tenants and park operators, a residents' committee is a group of tenants only, elected by tenants, to represent their interests. Queensland's MHRP Act provides a legislative requirement for a park operator to respond to a complaint or proposal from a residents' committee.

The WA Fair Trading (Retirement Villages Code) Regulations 2009, which deals with communal living situations in retirement villages, also provides for a residents' committee 'to consult with the administering body on behalf of the residents about the day-to-day running of the retirement village and any issues or proposals raised by the residents.'

Below is the likely position of each of the stakeholders on this issue:

- All parties want an effective forum for information exchange to improve the amenity of the park and to resolve disputes.
- Park operators want PLCs to be optional where insufficient tenants are willing to participate.

BOX 8: QUESTIONS ON PARK LIAISON COMMITTEES

1. In your view, should park liaison committees be optional? If yes, why? If no, why not?

2. Are there any particular types of tenancies for which park liaison committees should be mandatory? eg. lifestyle villages. Please provide reasons to support your view.

3. Should the park tenancy laws that require the establishment of a park liaison committee be extended to include those parks that have less than 20 long-stay sites? If yes, why? If no, why not?

4. Would you support the introduction of residents' committees in park tenancy legislation, similar to those operating in other jurisdictions, to replace park liaison committees? Please provide reasons to support your view.

9. MAINTENANCE / CAPITAL REPLACEMENT

Current situation:

Complaints received by the Department of Commerce for the period 2007-2011 indicate that issues surrounding facilities and maintenance are the third biggest category of complaints made to the Department (11%).

A long-stay tenant may apply to the SAT for a reduction in rent where there has been a reduction in the size or quality of the agreed premises.

Issue:

Some tenants have expressed concern that some park operators fail to maintain (and replace where appropriate) park infrastructure and that where the overall condition of the park is not maintained, the quality of the park lifestyle and the value of the tenant's dwelling may be diminished. This situation may also be a failure by the park operator to honour the contract with the tenant.

On the other hand, tenants may have different expectations about what is reasonable maintenance.

Below is the likely position of each of the stakeholders on this issue:

- Park operators want flexibility in charging arrangements and the discretion to choose the timing of repairs and maintenance to ensure they have sufficient funds to undertake necessary ongoing repairs and replace ageing infrastructure in order to maintain the park and realise their investment.

- Tenants want the quality of the agreed premises and shared facilities to be maintained.

BOX 9: QUESTIONS ON MAINTENANCE/CAPITAL REPLACEMENT

1. Are the rent review provisions in the RPLT Act sufficient to allow park operators (particularly those providing longer term leases) to maintain and improve park facilities over time? If yes, why? If no, why not?

2. Should the park tenancy laws give the State Administrative Tribunal specific power to make an order reducing the amount of rent payable on the grounds that a park operator has failed to provide park facilities that were agreed to at the time the long-stay agreement was signed? Please provide reasons to support your view.

3. Should the park tenancy laws give the State Administrative Tribunal specific power to make an order requiring that certain works be done when park facilities are below what was promised or what is considered reasonable? Please provide reasons to support your view.

4. Are there any other changes to the maintenance/capital replacement provisions of the park tenancy laws that you believe are necessary?

ADDITIONAL ISSUES RAISED IN THIS REVIEW

1. THE IMPACT OF PARK OWNER INSOLVENCY

This section deals with the potential insolvency of a park owner who has mortgaged their interest in the residential park. Further issues that specifically relate to the insolvency of a lifestyle village owner are discussed below at page 38.

It is recognised that tenants' financial interests and their tenure would be at risk if a park owner was to become insolvent. The fear of eviction in the event of insolvency has been identified as a concern for park tenants. This situation is distinct from the ability of a park owner to sell the park subject to vacant possession and terminate tenancy agreements, which is considered as one of the nine stakeholder issues, under the heading "Security of Tenure – Termination of Tenancy: Upon Sale of Park" on page 17.

The application of insolvency law will depend upon the type of legal entity that owns the park. If parks are owned by companies, they will be subject to federal laws under the *Corporations Act 2001 (Cth)*. If parks are owned by incorporated associations, they will be subject to the *Associations Incorporation Act 1987* (WA), and if they are owned by a partnership, they will be subject to the *Partnership Act 1895 (WA).*

In relation to the debts of a park owner, in the majority of cases there is likely to be a secured mortgage over the land. If there is no secured mortgage, a park owner faced with insolvency may decide to put itself into voluntary administration (if a company); wind itself up if an incorporated association; dissolve either voluntarily or by court order if a partnership; or file for bankruptcy if an individual. The laws relating to insolvency are complex and their application would depend on the circumstances in each case.

Regarding tenants' rights upon insolvency, the current RPLT Act prohibits recovering possession of the premises from the long-stay tenant except in accordance with an order of the SAT.

The SAT must not make an order for recovery of possession of the residential park by a holder of superior title, for example a bank, unless the SAT is satisfied that long-stay tenants currently in possession, or former tenants holding over after termination of a long-stay agreement, have had reasonable notice of the application.

The RPLT Act also provides for a tenant who is or was in possession of premises as a tenant under a long-stay agreement, or is holding over after the termination of a long-stay agreement, to apply to the SAT to seek an order vesting a tenancy with the tenant. On application from the tenant, the SAT may make an order upholding the tenancy and require the person with superior title to take on the lease.

Victoria has attempted to balance the competing needs of tenants and mortgagees in its *Residential Tenancies Act 1997* (Vic) by also including a minimum number of days notice before a mortgagee can require a tenant to vacate a site in a park.

Under the Victorian legislation, the notice to vacate must comply with the following minimum notice periods:

For site tenants who own or rent caravans:

- not less than 90 days if the mortgage was given before the tenant obtained a residency right; or
- not less than 6 months if the mortgage was given after the tenant obtained a residency right.

For owner-renters of park homes:

- not less than 90 days if the mortgage was given before the tenancy agreement started (unless a longer period is set out in the mortgage agreement); or
- not less than 365 days' notice must be given if the mortgage was given after the tenancy agreement started; or
- where there is a fixed-term agreement, it cannot be before the end of the term.

For renters of caravans that are owned by someone other than the park operator:

- not less than 30 days if the security over the caravan was given before the tenant obtained a residency right; or
- termination not less than 6 months if the security over the caravan was given after the tenant obtained a residency right.

It is recognised that residential tenancies are usually for a shorter duration (one or two years) than some park tenancies (lifestyle villages of more than 30 years), and that enforcing a minimum notice period for longer tenancies under the RPLT Act may have a greater impact on the mortgagee. It is also generally easier for a residential tenant to find another property than for a mobile home or park home owner to relocate their home.

Long-stay tenants may also have rights under section 91 of the *Transfer of Land Act 1893 (WA)* if it can be established that a mortgagee has consented in writing to the lease of the long-stay tenant. Another option may be for the long-stay tenant to lodge a 'subject to claim' caveat under the Transfer of Land Act flagging that their lease gives them a proprietary interest in the land. However, a caveat does not confer any additional rights to the long-stay tenant as its purpose is to provide persons with a potential interest in the land with information about the land. This may result in a long-stay tenant being in a stronger position to negotiate their rights in the event of insolvency.

BOX 10: QUESTIONS ON PARK OWNER INSOLVENCY

1. Are the interests of fixed term long-stay tenants sufficiently protected by existing laws? If yes, why? If no, why not?

2. Should park tenancy laws prevent the early termination of long-stay agreements in the event that the park owner becomes insolvent? If yes, why? If no, why not?

3. Should the park tenancy laws provide that in an insolvency situation where there is a fixed-term park home owner-renter tenancy (ie category 3 tenant), the tenant cannot be required to vacate the site before the end of the term? If yes, why? If no, why not?

4. Should the park tenancy laws adopt the Victorian approach which does not prevent the early termination of the tenancy agreement (except for fixed term owner-renters of park homes), but does mandate a minimum number of days notice to be given for a tenant to vacate a site? If yes, why? If no, why not?

5. Should the park tenancy laws provide for a different minimum notice period before a mortgagee can require a park home owner-renter (ie category 3 tenant) to vacate a site? Please provide reasons to support your view.

6. Have you had experience in trying to enforce your rights under the RPLT Act as a holder of superior title (such as a mortgagee)? If yes, please indicate whether the RPLT Act assisted or hindered you in enforcing those rights and why?

7. Have you had experience in trying to enforce your rights under the RPLT Act as a long-stay tenant against a holder of superior title (such as a mortgagee)? If yes, please indicate whether the RPLT Act assisted or hindered you in enforcing those rights and why?

2. DAMAGE TO PROPERTY AND VIOLENT BEHAVIOUR

Under the RPLT Act, it is a term of every long-stay tenancy agreement that a long-stay tenant:

- must not cause or permit a nuisance in the park, or use the premises for an illegal purpose;

- must not intentionally or negligently cause or permit damage to the premises; and

- is vicariously responsible for any act or omission of another person that is on the park by permission of the tenant.

If a long-stay tenant breaches a term of the long-stay tenancy agreement, the park operator may issue to the tenant a default notice. If the breach is not remedied before the day specified in the default notice (not less than 14 days), the park operator may proceed with the termination of the long-stay agreement.

In addition, under section 71 of the RPLT Act, a park operator may make an application to the SAT for an order immediately terminating a long-stay agreement on the grounds that the tenant has caused or is likely to cause or permit serious damage to park premises or injury to any person lawfully on the park, including the park operator. A default notice is not required in these circumstances.

Park operators have stated that while the RPLT Act does provide for a park operator to commence eviction proceedings or to terminate a long-stay agreement under the above circumstances, it is silent on the immediate exclusion of long-stay tenants and their visitors who engage in acts of violence or property damage.

A caravan park operator's submission to the EISC Inquiry on this issue stated that the situation where a park owner cannot remove problem tenants immediately is a 'serious concern to the safety and welfare of other park users'[20]. Similarly, in its submission, the Department of Local Government and Regional Development stated that one of the issues affecting the viability of caravan parks is 'legislation preventing park operators from removing undesirable tenants from the park without lengthy and expensive legal procedures'[21].

On the other hand, and without proper safeguards and limitations, tenants may have concerns that park operators could continually use a notice to leave, or use the threat of a suspension, to control and intimidate their tenants.

Police Intervention

Park operators are able to contact their local police for assistance where a long-stay tenant, their visitor, or any other person on the park (such as a short-term resident or holidaymaker) engages in violent behaviour or property damage. The police can also discuss possible options to respond with the park operator, including the option of applying for a misconduct restraining order (MRO).

An MRO is designed to stop a person behaving in a way that is intimidating or offensive towards another person. It can also stop a person causing damage to another's property or acting in a way that may lead to a breach of the peace. However, an MRO does not enable immediate exclusion of a long-stay tenant from the park. An applicant must attend the Magistrates Court to apply for an order. Furthermore, only the person seeking to be protected from the intimidating or offensive behaviour may apply for an order. Therefore, if a person does not wish to take action in response to the behaviour, then the park operator would be precluded from taking action themselves.

Victoria has attempted to balance the competing needs of tenants and park operators in its legislation, the *Residential Tenancies Act 1997 (Vic*), by including a mechanism for a park operator to be able to temporarily exclude a tenant or resident who has committed a serious act of violence or where a person is in danger from a tenant or resident.

Part 8 of the Victorian Act allows a manager of a caravan park to remove a tenant where it is alleged that the tenant has committed a serious act of violence or the safety of any person on the premises is in danger from the tenant.

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[20] Submission No.79 from Cable Beach Caravan Park to Economics and Industry Standing Committee.
[21] Submission No.71 from Department of Local Government and Regional Development to Economics and Industry Standing Committee.

A manager who alleges that a tenant has committed a serious act of violence or that a person is in danger from the tenant can serve a notice to leave which requires the tenant to leave the premises immediately. The tenancy is suspended for two business days. The manager can make an application to Victoria's Civil and Administrative Tribunal to terminate the tenancy. Such an application must be made within two business days of the notice to leave being given to the tenant.

Where the manager makes an application to the Tribunal, the suspension of the tenancy continues until the matter is heard by the Tribunal. The Tribunal must hear the manager's application within two business days of the application being made. The Tribunal may make an order terminating the tenancy or may order the reinstatement of the tenancy.

The impact of adopting this model on the capacity of the WA SAT or Magistrates Court to hear urgent applications within a short period is currently unknown.

BOX 11: QUESTIONS ON DAMAGE TO PROPERTY AND VIOLENT BEHAVIOUR

1. Have you had experience as a park operator in trying to enforce your rights under section 71 of the RPLT Act? If yes, please indicate whether the RPLT Act assisted or hindered you to enforce those rights and protect other residents and why?

2. If you are a resident, have these powers been used to successfully address problems in your park? If yes, why? If no, why not?

3. Should the RPLT Act adopt a similar approach to the Victorian model and allow park operators to exclude tenants from parks for a period of time (eg two days)? If yes, why? What period of time should be used? If no, why not?

4. If you support the Victorian model, what, if any, additional safeguards should be included to protect tenants? Example safeguards include:

   - requiring a park operator to call the police before being eligible to issue the tenant with a notice to leave;
   - only allowing the service of a notice to leave where there has been a serious act of violence and there is an immediate and ongoing danger;
   - requiring the SAT to order compensation to a tenant where the grounds for the service of a notice to leave have not been proven; and
   - creating an offence for a park operator to serve a notice to leave in an attempt to harass or intimidate or otherwise force a tenant to vacate the premises.

3. THE FUTURE REGULATION OF LIFESTYLE VILLAGES

In section one of this paper lifestyle villages were introduced as a popular residential option for park home owner-renters (ie category 3 tenants).

Lifestyle villages are in some ways similar to retirement villages as they offer fixed term leases of 30 years or more. Similar to retirement villages, lifestyle villages offer residents a communal environment in which people look out for each other and generally offer more shared facilities and services than are available in the mixed-use caravan parks. Furthermore, it is unlikely that mixed-use parks or park home parks offer tenants leases of 30 years or more. The attractiveness of the lifestyle village to tenants is likely to be linked to the offer of more certainty of tenure and the expectation that they will be living with like-minded residents.

While there are similarities between lifestyle villages and retirement villages, lifestyle villages are currently regulated by the RPLT Act rather than the *Retirement Villages Act 1992* (RVA). Lifestyle villages are generally marketed to people over 45 years of age, rather than retirees who are 55 years or older.

In addition, unlike retirement villages, lifestyle village residents do not pay a premium to the park operator to enter the village. However, a prospective lifestyle village resident does still have to purchase a park home from either the village operator or an outgoing tenant which may cost in excess of $200,000.

The issue is whether the current regulation of lifestyle villages is adequate. This discussion paper is not concerned with which law should regulate this area, but rather whether there should be included specific provisions that acknowledge the special nature of the lifestyle village tenancy.

For people who want to commit to the park lifestyle for an extended period of time, obtaining security of tenure is paramount. It is acknowledged that security of tenure may also be an important consideration for tenants of other parks, and this issue is discussed earlier in the paper at page 17 'Security of Tenure upon sale of the park'.

Lifestyle villages offer leases of more than 30 years. These leases also contain provisions that reflect the parties' intentions that tenants will have the opportunity to remain at their lifestyle village for as long as they wish regardless of a change in ownership of the lifestyle village.

Currently, the RPLT Act permits the lifestyle village operator to terminate the tenancy agreement if the lifestyle village operator has entered into a contract for the sale of the village and is required to give vacant possession. The lifestyle village operator must give the tenant notice of at least 180 days before terminating the tenancy.

It appears that there is a disconnect between the intent of the parties at the time of entering into the tenancy and the provisions of the RPLT Act which regulate this tenancy arrangement.

The lifestyle village tenant may choose to protect their interest in the tenancy in a number of ways, such as lodging a 'subject to claim' caveat. However, it may be appropriate to consider legislative options in order to more closely align the intent of the parties at the time of entering into the tenancy and the provisions of the RPLT Act.

One approach may be to consider provisions similar to the Retirement Villages Act that prohibit the termination of a retirement village scheme without the approval of the Supreme Court while there are any residents living in the village. This prevents a new owner of a retirement village from redeveloping the land and not honouring existing tenancies.

Lifestyle village owner Insolvency

While there is a general discussion of the impact of park owner insolvency above (refer page 34), the unique nature of lifestyle village tenancies may require additional measures to be considered. Specific provisions of the Retirement Villages Act relating to memorials on title and transfer of ownership are worthy of consideration. For example, the transfer of ownership provisions provide that a residence contract binds a new owner (which includes a person who acquires any interest in or right affecting land or has a mortgage, charge or other encumbrance over land) as if the new owner had also entered into the contract. A residence contract in a retirement village can only be terminated by a mortgagee if the mortgage was entered into before the commencement of section 17(1)(e) of the Act (ie 10 July 1992).

By introducing a similar requirement to lifestyle villages, a mortgagee who has taken possession of a lifestyle village would be required to honour existing tenancies and allow tenants to remain in the village for the remainder of their lease term. It is possible that a lifestyle village lease would already attempt to ensure that the village mortgagee is bound by the tenancy agreement. For this reason, lifestyle village owners may support the introduction of such a requirement.

As discussed earlier at page 35, long-stay tenants may also have rights under the Transfer of Land Act if it can be established that a mortgagee has consented in writing to the lease of the long-stay tenant.

BOX 12: QUESTIONS ON FUTURE REGULATION OF LIFESTYLE VILLAGES

1. Should park tenancy laws prevent the early termination of lifestyle village leases of a significant duration (eg. 30 years) other than where there has been a breach of the lease agreement? If yes, why? If no, why not?

   For example, the lease would continue despite the sale of the village or a desire to redevelop the village.

2. Should a mortgagee who has taken possession of a lifestyle village be required to honour existing tenancies and allow tenants to remain in the village for the remainder of their lease term? If yes, why? If no, why not?

3. What benefits or costs would result from park tenancy laws prohibiting lifestyle village operators changing the use of the land?

4. Should park tenancy laws introduce additional protections for lifestyle village tenants when a lifestyle village operator becomes insolvent, such as those contained in the Retirement Villages Act (eg. memorial on title)? If yes, why? If no, why not?

5. Do you believe other non-lifestyle village parks that offer tenancies of a significant duration should be subject to the same regulation as lifestyle villages? If yes why? If no, why not?

6. Do you think it is reasonable to define a lifestyle village in terms of parks that offer leases of more than 30 years? If yes, why? If no, why not?

7. Are there other matters concerning tenancy arrangements in lifestyle villages that should be regulated? If so, please outline these matters and how they might be regulated.

3. GENERAL QUESTIONS TO STAKEHOLDERS

The Department is encouraging stakeholders to provide general feedback on the operation of the RPLT Act in addition to the specific issues identified earlier in this paper.

Below are some general questions that may assist stakeholder to consider the overall operation of the RPLT Act. However, you should not feel constrained by these questions. If you have other ideas on how the regulation of the tenancy relationship in residential parks could be improved, then the Department would like to have your suggestions.

BOX 12: GENERAL QUESTIONS

1. Should the RPLT Act continue to regulate all three tenant categories identified in this paper? If yes why? If no, why not?

2. Do you believe there are other tenant categories that should be regulated by the RPLT Act? Please provide reasons to support your view.

3. Should the categories of tenants be based on something other than moveability, which is the basis on which park tenants are categorised in this paper? Please provide reasons to support your view.

4. Do you think there are sufficient similarities between renters (ie category 1 tenants) and residential tenants to warrant returning the regulation of renters to the Residential Tenancies Act? If yes, why? If no, why not?

5. Should park tenancy laws prohibit the parties to a long-stay agreement from agreeing to exclude or change the provisions of the RPLT Act? If yes, why? If no, why not?

6. Are there any other issues you believe should be considered in formulating options for regulating park tenancy agreements? If so, please outline these issues.

4. APPENDIX

SURVEY QUESTIONS – PARK OPERATORS/OWNERS

By completing this survey, you will be directly contributing to improving the regulation of residential parks.

Please note that because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please complete the survey anonymously.

Your name (optional): ……..

1. If you own your residential park, what legal entity do you use? ☐ Company ☐ Partnership ☐ Association ☐ Sole trader ☐ Other, please specify ..... ☐ Not applicable.
2. Is the land on which your park is located leased from another entity, such as a local government council? ☐ Yes Go to Question 3 ☐ No Go to Question 4 ☐ Unsure Go to Question 4
3. If you answered yes to Q2, what is the term of your lease for the residential park? .....
4. What type of park do you own/operate? ☐ Mix of long-stay and tourist sites. If yes, please provide number of tourist and long-stay sites: …… tourist sites. …..long-stay sites. ☐ Only long-stay sites ☐ Other, please specify .....
5. What type(s) of agreement(s) do you generally offer? Please tick as many boxes as are relevant: ☐ 89 day contract ☐ Fixed-term: less than 20 years ☐ Fixed-term: 20 or more years ☐ Periodic. If you ticked this box, what is the percentage of periodic leases - …….% ☐ Other, please specify .....
6. Do you charge an up-front fee to rent a site? ☐ Yes Go to Question 7 ☐ No Go to Question 8
7. If you answered 'yes' to Question 6, what is the purpose of the up-front fee? ……
8. If you charge visitor fees, please provide the basis on which you charge them? ☐ Not applicable **…**……
9. Do you require that you act as the selling agent in your leases with tenants? ☐ Yes ☐ No

Thank you for your participation. Please see next page for lodgement details.

SURVEY QUESTIONS - TENANTS

By completing this survey, you will be directly contributing to improving the operation of your park.

Please note that because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please complete the survey anonymously.

Your name (optional): ……..

1. Do you rent the dwelling you live in as well as the site?
☐ Yes Go to Question 2 ☐ No Go to Question 3

2. If you answered 'yes' to question 1, do you rent both the dwelling and site from the park operator or does someone else (other than the park operator) own the dwelling?
☐ Yes ☐ No

3. What type of dwelling do you live in?
☐ Mobile home (including caravan)
☐ Park home
☐ Other, please specify .....

4. In your opinion, could your dwelling be easily relocated off or within the park?
☐ Yes, please explain ……
☐ No, please explain……..
☐ Unsure

5. What type of lease agreement do you have?
☐ 89 day contract.
☐ Fixed-term: Less than 20 years.
☐ Fixed-term: 20 or more years.
☐ Periodic.
☐ Other, please specify .....

6. How long have you been living in a residential park?
☐ Less than 3 months ☐ More than 3 months but less than a year
☐ More than a year but less than 5 years ☐ 5 years or more

7. Did you pay an up-front fee to rent a site?
☐ Yes ☐ No

8. How confident are you to negotiate the terms of your lease with the park operator?
☐ Extremely confident ☐ Reasonably confident ☐ Slightly apprehensive ☐ Very apprehensive

9. If your park operator charges for visitors, on what basis is your visitor fee charged?
☐ Flat fee per person, if so how much……
☐ Flat fee per year, if so how much……
☐ Fee calculated on facilities used:
If fee calculated on facilities used, is your dwelling self contained ☐ Yes ☐ No
☐ Other, please explain……
☐ Not applicable

Thank you for your participation.

Completed surveys can be mailed to: Residential Parks Review, Department of Commerce (Consumer Protection Division), Locked Bag 14, Cloisters Square PO Perth WA 6850 or emailed to: consultations@commerce.wa.gov.au

Department of Commerce

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