



Government of **Western Australia**
Department of **Commerce**
Consumer Protection

CONSULTATION

DECISION REGULATORY IMPACT STATEMENT Statutory review of the *Residential Parks* *(Long-stay Tenants) Act 2006*

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TERMINOLOGY USED IN THIS PAPER

The following is a summary of key terms used in this paper.

Commissioner	The Commissioner for Consumer Protection
Department	Department of Commerce
Economics and Industry Standing Committee (EISC)	A WA Parliamentary Committee, which conducts reviews and reports to the Legislative Assembly.
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.
home	A relocatable home that is situated on a site in a residential park. May be a caravan, mobile home, cabin or manufactured home.
home owner	A tenant who owns a home and rents the site on which it is located in a residential park.
long-stay tenant or 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.
park operator	The person operating a residential park and who grants the right to occupy a site within the park.
park liaison committee	A group, consisting of the park operator and tenant representatives, that assists the park operator to maintain and improve the lifestyle of tenants.
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 tenant who rents both the home and site in a residential park.
residential park	A parcel of land comprising sites that are rented to long-stay tenants. May be a mixed-use caravan park, a park home park or a lifestyle village.
Residential Tenancies Act	The <i>Residential Tenancies Act 1987</i> - the Western Australian Act that regulates traditional tenancy arrangements between landlords and residential tenants.
RPLT Act	The <i>Residential Parks (Long-stay Tenants) Act 2006</i> – the Western Australian Act that regulates the tenancy relationship between park operators and long-stay tenants in a residential park.
RPLT Regulations	The <i>Residential Parks (Long-stay Tenants) Regulations 2007</i>
State Administrative Tribunal or SAT	The State Government administrative tribunal that has the jurisdiction to resolve disputes under the RPLT Act.
site	A parcel of land in a residential park that is leased to a long-stay tenant.
site agreement	An agreement to rent only the site in a residential park, the tenant places their own home on the site.

EXECUTIVE SUMMARY

It is proposed to introduce amendments to the legislation governing the relationship between the operators of residential parks and the tenants who live in such parks for extended periods.

The overarching objective of doing so is to ensure, to the greatest extent possible, the *Residential Parks (Long-stay Tenants) Act 2006* (the RPLT Act) adequately balances the demands of long-stay residential park tenants for greater security of tenure, while supporting the maintenance of existing residential parks and the development of new residential parks.

This will be achieved through:

- identifying and remedying those provisions of the RPLT Act which may not be operating as intended;
- developing proposals for legislative reform that 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
- ensuring the RPLT Act suits the divergent nature of the marketplace, which ranges from mixed-use parks through to lifestyle villages and park home parks.

There are approximately 160 residential parks in Western Australia, with almost 7,000 long-stay sites currently occupied. The majority of park residents are home-owners (own their own home and rent the site from the park operator) with lease types ranging from periodic through to fixed term agreements of up to 60 years. Only a small proportion of park residents rent both the home and the site, with leases typically of a shorter duration.

The RPLT Act regulates the tenancy arrangements between tenants and park operators and, as such, cannot address broader issues affecting security of tenure, such as the provision of more land for the development of residential parks suitable for long-term residents, the provision of alternative accommodation options for park home residents when caravan parks are sold and the zoning of land on which caravan parks are situated so as to ensure that the land cannot be developed for other purposes.

In June 2014, the former State Government released a Consultation Regulatory Impact Statement (C-RIS) for a twelve week consultation period. The consultation paper proposed a number of options for reform of the RPLT Act based around identified key areas of stakeholder concern, and sought feedback from stakeholders in relation to the viability of those options. In response to the C-RIS, 38 written submissions and 166 survey responses were received.

The feedback to the C-RIS, and an evaluation of similar legislation in other jurisdictions, resulted in the development of a Statutory Review Report proposing a number of recommendations in each of the identified key areas of stakeholder concern. The Statutory Review Report was tabled in Parliament in February 2016 having been released for a 12 week period of consultation in December 2015.

Nineteen responses were received to the Statutory Review Report. Eight responses were from tenants, six from park operators, four from representative bodies (i.e. Caravan Industry Association of Western Australia (CIAWA); Park Home Owner's Association (PHOA); Shelter WA; and the Goldfields Community Legal Service) and one from government (Housing Authority).

An analysis of stakeholder responses to the recommendations put forward in the Statutory Review Report led to a refinement of some of its proposed recommendations. The recommendations detailed in this paper represent the Department's final recommendations to Government arising from the statutory review process.

A summary of each of the recommendations detailed in this paper is at Appendix D.

The anticipated outcomes from the legislative reform process are that:

- there is greater contractual certainty for long-term residents of residential parks and park operators; and
- the regulatory framework promotes a level, competitive playing field for park operators, which does not unduly interfere with their right to run their business.

It is acknowledged that changes to the legislation will impact on a number of groups, including park operators, park residents, and state and local government.

However, stakeholder feedback on the operation of the RPLT Act suggests that the current mechanisms in place to regulate the tenancy arrangements in residential parks are failing in some areas. Research also suggests that non legislative measures are not effective.

The recommendations respond to these challenges while seeking to minimise the potential cost burden on park operators. For example, by including administrative requirements, such as disclosure, rather than imposing a direct financial cost.

To ensure that the legislation is effectively implemented, a public awareness campaign will be undertaken and adequate time given to park residents and park operators to ensure they can comply with the new requirements.

1 PURPOSE AND STRUCTURE OF THIS PAPER

1.1 STATUTORY REVIEW

Under section 96 of the RPLT Act there is a statutory obligation for the operation of the Act to be reviewed as soon as practicable after 5 years from commencement (3 August 2007). The review commenced in August 2012 with the release of a discussion paper.

A key purpose of the 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.

1.2 REGULATORY IMPACT ASSESSMENT

The Western Australian Government is committed to a regulatory impact assessment process aimed at carefully considering the fundamental question of whether regulatory action is required or if policy objectives can be achieved by alternate measures, with lower costs for business and the community.

In developing and reviewing legislation, the potential costs of regulation must be carefully considered and weighed against the potential benefits. This paper has been developed as part of the regulatory impact assessment process and sets out recommendations for Government based on an analysis of the costs and benefits of proposed options for reform.

1.3 REVIEW PROCESS

A discussion paper, *Statutory Review of the Residential Parks (Long-stay Tenants) Act 2006*, was released in August 2012 for a three month period of consultation. The discussion paper outlined a number of specific issues for consideration as part of the statutory review. Stakeholders were invited to provide a submission and/or respond to a series of survey questions.

A Consultation Regulatory Impact Statement, *Statutory Review of the Residential Parks (Long-stay Tenants) Act 2006*, (C-RIS) was released on 6 June 2014. Submissions closed on 12 September 2014.

The C-RIS examined the issues being considered as part of the statutory review within a regulatory impact assessment framework. The C-RIS presented possible options for reform and sought feedback from stakeholders in relation to the viability of those options. In particular, feedback was requested as to the potential costs and benefits of the various options that were presented. Stakeholders were invited to provide a written submission or complete an online survey.

Copies of the C-RIS were distributed to all residential parks in Western Australia and other key stakeholders. The C-RIS was published on the Department's website and the review process was promoted via a media release and a series of articles in community newspapers and industry newsletters.

During the consultation period the Department conducted information sessions for park residents in Mandurah, Gosnells and Joondalup – over 300 people attended these sessions.

The Department also conducted a telephone survey of each residential park in Western Australia to obtain data about the number and nature of long-stay tenancies. The data collected via this telephone survey is summarised in part 3.

1.4 STAKEHOLDER RESPONSE TO THE C-RIS

38 written submissions were received in response to the C-RIS, including:

- 18 from tenants and their representatives;
- 11 from park operators and their representatives; and
- 9 from others, such as government, NGOs and property industry representatives.

A list of respondents who provided written submissions is at Appendix A.

166 survey responses were received, including:

- 112 from home owners (those who own the home and rent the site);
- 5 from renters (those who rent both the site and home);
- 15 from park operators;
- 3 from advisors; and
- 31 from unspecified respondents.

The feedback received in the written submissions and survey responses is summarised in this paper.

The Caravan Industry Association Western Australia (Inc.) (CIAWA) is the peak caravan and camping industry body for Western Australia. CIAWA undertook a member survey and has included details of the feedback in its submission. Tenancy WA and Shelter WA held a joint community consultation session; information obtained at this session is included in their submissions. Tenancy WA is a community legal centre specialising in residential tenancy matters, and Shelter WA is the peak housing body for affordable housing and homelessness.

1.5 STATUTORY REVIEW REPORT

The Department released a report, *Statutory Review of the Residential Parks (Long-stay Tenants) Act 2006*, in December 2015 for a 12 week period of consultation. In accordance with the requirements of section 96 of the RPLT Act, the Statutory Review Report was also tabled in the Parliament on 16 February 2016.

Nineteen responses were received to the Statutory Review Report. Eight responses were from tenants, six from park operators, four from representative bodies (i.e. Caravan Industry Association of Western Australia (CIAWA); Park Home Owner's Association (PHOA); Shelter WA; and the Goldfields Community Legal Service) and one from Government (Housing Authority).

A list of respondents who provided feedback on the Statutory Review Report is at Appendix B. The feedback received from stakeholders is summarised in this paper.

The recommendations detailed in this paper represent the Department's final recommendations to Government arising from the statutory review process.

2 BACKGROUND

2.1 WHAT IS A RESIDENTIAL PARK?

Residential parks provide sites upon which relocatable homes are placed. Tenants either rent a home and a site, or rent a site only and own the home on the site. The home may be a caravan, cabin, park home or motor home. Regardless of whether the tenant owns the home or not, park living always involves renting the site on which the home is located.

2.2 PARK RESIDENTS

Currently, the RPLT Act covers long-stay tenants, who are either:

- renters, who rent both the site and the dwelling; or
- home-owners, who own their dwelling (such as a caravan or park home) and rent the site on which the dwelling is situated.

Many tenants in residential parks have chosen this lifestyle and enjoy the community nature of park living. However, the EISC inquiry identified a number of factors which make long-stay tenants vulnerable in both an economic and social sense, including:

- the decline in the number of residential parks;
- the declining affordability of traditional home ownership or access to the rental market;
- a lack of security of tenure; and
- the fact that home owners have purchased a depreciating asset¹.

A number of unique issues arise for home owners, due to the fact that they own a depreciating asset (the home), but only lease the land on which it is situated. The disadvantage faced by home owners is highlighted by the fact that financial institutions will not lend a significant amount of money for the purchase of a home in a residential park due to the fact that land ownership is not involved². In many instances it is difficult and costly to relocate a home. Issues about security of tenure are therefore very important to home owners.

According to ABS Census 2011 data³, more than 50 per cent of all people living in residential parks are aged between 50 and 69 years of age and approximately 20 per cent of all people living in residential parks are aged between 70 and 99 years of age. A large number of tenants in residential parks are therefore on fixed incomes and can be viewed as more vulnerable tenants.

¹ Economics and Industry Standing Committee Report, *Provision, Use and Regulation of Caravan Parks and Camping Grounds in Western Australia*, Legislative Assembly, Parliament of WA, 2009, page 272

² Economics and Industry Standing Committee Report, *Provision, Use and Regulation of Caravan Parks and Camping Grounds in Western Australia*, Legislative Assembly, Parliament of WA, 2009, page 281

³ Australian Bureau of Statistics 2011, *Census of Population and Housing, Western Australia by Age in Ten Year Groups and Dwelling Location* (Private dwellings, includes camping grounds and excluding non-private dwellings), www.censusdata.abs.gov

2.3 TYPES OF PARKS

There are a number of different types of parks covered by the current definition of residential park.

Mixed-use parks

Mixed-use parks comprise holiday, temporary or short-stays and residential accommodation, with many of these parks providing designated areas for tourists and long-stay tenants.

Long-stay tenants living in mixed-use parks could be either renters or home owners. The dwellings on these parks also vary, from motorhomes or caravans that are easily movable, to caravans with solid annexes and manufactured homes that are relatively fixed. Park operators may offer periodic tenancy agreements or fixed term tenancies.

In their responses to the telephone survey, park operators or managers appeared to have varying views on the benefit of having long-stay tenants in their park. In some instances the operators viewed the long-stay tenants as essential, both in terms of income stream and in creating a sense of community on the park. Other operators appeared to be of the view that it is sometimes difficult to balance the needs of long-stay tenants with those of holiday makers and indicated that they may change the tenant mix in the future to reduce the number of long-stay sites.

Therefore, the legislative framework that applies to long-stay agreements in mixed-use parks needs to ensure that the regulatory burden in relation to this part of the sector is appropriately balanced.

Park home parks and lifestyle villages

Park home parks are residential parks with only long-stay accommodation, that is, no holiday rentals. In park home parks, tenants have various tenure arrangements, from periodic to fixed term tenancies of up to 30 years. It is assumed that these parks predominantly comprise home owners living in manufactured homes rather than caravans and so the dwellings are usually not easily moved.

Lifestyle villages are also residential parks that provide long-stay accommodation only. However, unlike park home parks, lifestyle villages generally offer tenants very long fixed term tenancies, of 30 years or more (sometimes up to 60 years), and access to resort style facilities. Lifestyle villages comprise home owners living in manufactured homes, and are often marketed to people aged 45 years and over. Once again, dwellings are not easily moveable.

Since the commencement of the RPLT Act, the lifestyle village model has become increasingly popular and a more specialised form of tenancy arrangement.

		MIXED-USE PARKS	PARK HOME PARKS	LIFESTYLE VILLAGES
How long is tenancy	Short stay tenants (<3 months)	✓	✗	✗
	Periodic	✓	✓	✗
	Fixed term	✓	✓	✓
	Long fixed term (e.g. 30 years)	✗	✓	✓
What does tenant rent	Site only (tenant owns dwelling)	✓	✓	✓
	Site and dwelling	✓	✗	✗
Type of dwellings	Caravan	✓	✗	✗
	Park home (manufactured home)	✓	✓	✓

Strata titled caravan parks

There are estimated to be nine strata titled residential parks in Western Australia.

Unlike mixed-use caravan parks, park home parks or lifestyle villages, each site in a strata park is capable of being owned individually. There may therefore be a number of owners of the residential park land.

Long-stay tenants living in strata parks could be either renters or home owners. The dwellings on these parks also vary, from motorhomes or caravans that are easily movable, to caravans with solid annexes and manufactured homes that are relatively fixed. Tenants could be offered either periodic or fixed term tenancies. Strata park tenancies are currently covered by the RPLT Act.

Strata parks and options to deal with strata park tenancies are considered separately at part 6.2 of this paper.

3 THE RESIDENTIAL PARKS SECTOR IN WESTERN AUSTRALIA

3.1 SUMMARY OF SURVEY DATA

The Department identified 190 parks in Western Australia for the purposes of undertaking a survey of park operators. These parks have previously been noted as having long-stay tenants. Of the parks contacted, 30 reported that they do not currently have long-stay tenants; the number of residential parks is therefore estimated as 160. The survey was undertaken between November 2014 and March 2015.

Departmental officers attempted to contact each of these parks, either by telephone or email and asked a range of questions designed to provide an overview as to the number and types of long-stay tenancies currently on foot in Western Australia. Questions were also asked about the amount paid purchase a home in the park and rent and other costs payable.

Of the 190 parks:

- 163 responded to the survey questions;
- 4 parks were no longer in business or closed for renovations; and
- 23 parks were either not contactable or were unwilling to provide a response to the survey.

Types of residential parks

The following table summarises the breakdown of the 163 parks that responded to the survey:

Long-stay only parks	23
Mixed-use parks	110
Short-stay only parks (tourist parks)	30

Some mixed-use parks advised that they have a separate area of the park designated as a 'lifestyle village' with specific facilities for the use of long-stay residents only – these parks have been classed as mixed-use parks for the purpose of summarising the survey results.

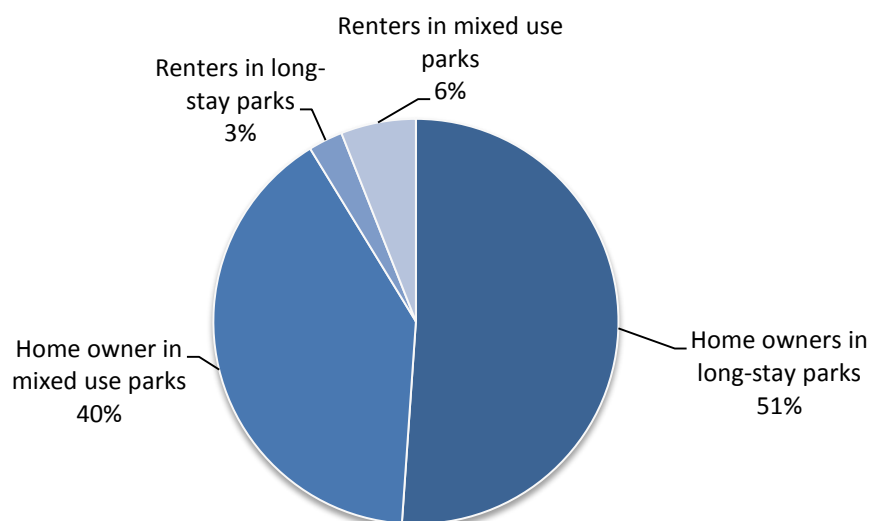
The data set out below relates to those parks listed as long-stay only or mixed-use and that provided responses to the survey questions.

Types of tenancies

The total number of long-stay sites is distributed as follows:

Type of park	Number of long-stay sites			
	Home owners	Renters	Unknown	Vacant
Long-stay only	2958	159		713
Mixed-use	2643	630	161	263
Total	5601	789	161	976
	6551			976

It is estimated that there are an additional 981 long-stay sites in the 23 parks that did not provide response to the survey⁴. The number of occupied long-stay sites is therefore approximately 7,532, with an additional 976 unoccupied sites available.

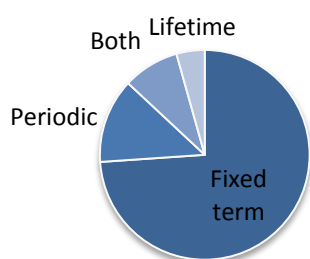


Types of tenancies - occupied

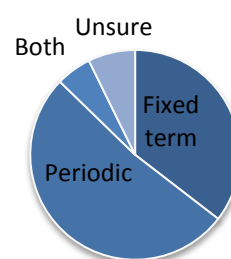
For the parks with long-stay tenants that did respond to the survey questions the following types of tenancies are offered:

Type of park	Types of tenancies – number of parks				
	Fixed term	Periodic	Both periodic and fixed term	Lifetime lease	Unsure
Long-stay only	17	3	2	1	
Mixed-use	39	57	6		8

Long-stay parks - lease types



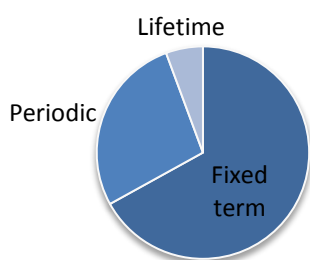
Mixed-use parks - lease types



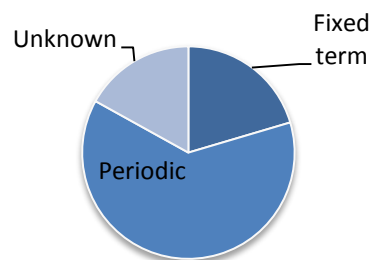
⁴ This estimate is based in data gather by the Department's proactive compliance team or from Local Government.

		Types of tenancy – number of sites		
		Long-stay	Mixed-use	Total
Home owners	Fixed term	2434	1317	3751
	Periodic	208	1326	1534
	Lifetime	316		316
Renters	Fixed term	90	104	194
	Periodic	69	526	595
Unknown	Unknown		161	161

Home owners - lease types

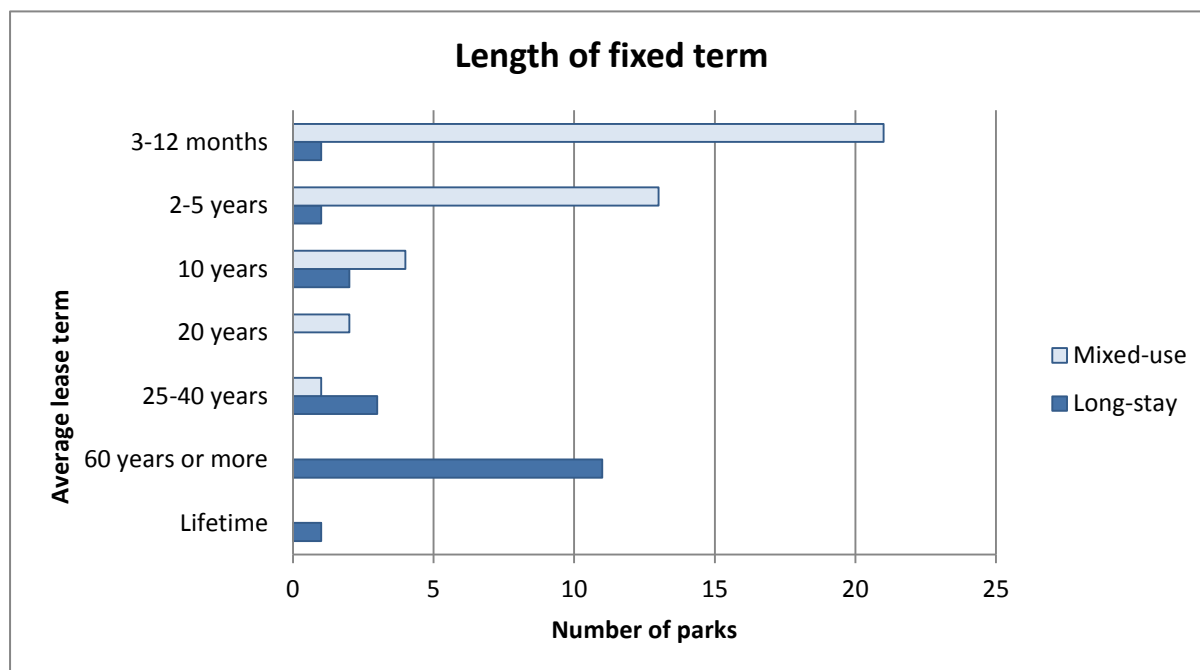


Renters - lease types



Lease terms

The majority of long-stay only parks offer fixed term leases, whereas fixed term leases are offered in around 40 per cent of mixed-use parks. The following diagram summarises the length of fixed term tenancies offered by various parks.



One long-stay only park accommodates renters only and offers 12 month leases. One park accommodates both renters and home owners and offers leases of varying durations. The remaining long-stay only parks provide leases to home owners only, these leases range in duration from two years to 60 years, with the majority of park offering leases over 20 years. Mixed-use parks generally offer fixed term leases with shorter terms, ranging from 3 months to 20 years, with the majority of fixed term leases being less than 5 years.

It should be noted that the *Planning and Development Act 2005* (WA) provides that a person may not grant a lease of land for a term exceeding 20 years without the approval of the Western Australian Planning Commission (WAPC)⁵.

Planning Bulletin 71 sets out the WAPC policies in relation to approvals of these leases including that:

- an expiry date for the lease should clearly be specified;
- for residential leases the maximum term should be 60 years; and
- where appropriate, the terms of individual leases in large developments (such as lifestyle villages) should be synchronised so that each lease has the same end date.

In accordance with these requirements, a number of parks provide leases with terms that are synchronised to expire 60 years from the date on which the park commenced operations.

Purchase price for home

The purchase price for homes in residential parks varies significantly and appears to be influenced by a number of factors, including:

- the size and condition of the home itself;
- the type of residential park, whether it is long-stay only or mixed-use;
- the nature of facilities available in the residential park; and
- the type of lease offered.

The following table summarises the estimated price range for homes based on the survey information provided. It should be noted that this information is based on park operator understanding of sale prices within recent years.

	Price range	
	Long-stay only parks	Mixed-use parks
Caravan – periodic lease	\$12,000 - \$80,000	\$4,000 - \$50,000
Caravan – fixed term lease	\$80,000	\$6,000 - \$50,000
Park home – periodic lease	\$26,000 - \$190,000	\$20,000 - \$270,000
Park home – fixed term	\$150,000 - \$450,000	\$50,000 - \$250,000

The data provided indicates that sale prices appear to be higher for those homes with longer tenancies, however the level of facilities provided and nature of home also have an influence.

⁵ Section 136.

Rent and other lease costs

The rent for long-stay only parks is relatively consistent across both metropolitan and regional parks and ranges from \$125 to \$176 per week in metropolitan parks to \$115 to \$176 in regional areas for site only agreements. Renters in long-stay only parks pay around \$250 per week. Some operators have advised that they attempt to keep rents in line with rent assistance amounts in order to ensure ongoing affordability for tenants on pensions or benefits. In some parks exit fees or sharing agreements, such as deferred rent payable on the sale of a home, are in place to offset the lower rents paid during the term of the lease.

The rent is more varied in mixed-use parks. In the metropolitan area the rent for a site only ranges from \$130 to \$215 per week, with renters paying between \$250 and \$315 per week. In regional areas the rent for a site only ranges from \$50 per week to \$330 per week, with renters paying between \$200 and \$250 per week. The large variations in rent in regional areas can be attributed to factors relating to the location, with higher rents payable in premium holiday locations or areas where accommodation is required by the resources sector.

The majority of tenants also pay for electricity, which is separately metered. Some also pay metered water charges. One park reported that water rates were also passed onto tenants.

3.2 FACTORS AFFECTING THE SECTOR

There have been a number of changes in the marketplace that have impacted the residential parks sector in recent years, such as:

- park closures and subsequent redevelopment of parks for more commercially attractive uses. These include residential subdivision, as land values have risen, particularly in prime coastal and metropolitan areas where urban sprawl has reached the residential park land;
- an increase in the letting out of entire caravan parks in regional areas to employers to accommodate “fly-in fly-out” workers;
- the emergence of residential parks dedicated to providing low-cost alternatives to retirement housing; and
- a reallocation of sites within parks between long and short stay, with an increase in demand for both caravan and camping holidays and affordable housing generally⁶.

In the eastern states, particularly New South Wales, there has been a general trend for older style family owned and managed caravan parks to be bought out by firms with multiple properties and a focus on profitability, turning caravan parks into manufactured home estates (equivalent to Western Australia’s park home parks and lifestyle villages).⁷

⁶ Economics and Industry Standing Committee Report, *Provision, Use and Regulation of Caravan Parks and Camping Grounds in Western Australia*, Legislative Assembly, Parliament of WA, 2009, pages 51-84

⁷ Goodman R et al, *The Experience of Marginal Rental Housing in Australia*, Australian Housing and Urban Research Institute, RMIT Research Centre, July 2013, page 62

4 OBJECTIVES OF THE RPLT ACT

4.1 RATIONALE FOR GOVERNMENT INTERVENTION IN THE RESIDENTIAL PARKS SECTOR

The key purpose of the RPLT Act is to regulate the tenancy arrangements 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 the site and dwelling in the park.

The RPLT Act sets out the broad principles (or minimum standards) for the conduct of park operators and tenants in the residential park tenancy market.

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

Prior to 2007, tenancy agreements in residential parks were regulated by the Residential Tenancies Act. However, in recognition that the needs of park operators and residents of residential parks are significantly different to traditional tenancies, a statutory review of the Residential Tenancies Act recommended that tenancy agreements in residential parks be regulated separately from traditional tenancies⁸. The RPLT Act was created to respond specifically to those needs.

Key factors that distinguish residential park tenancies from other residential tenancies include:

- the communal nature of park living and the need to address issues arising in relation to matters such as park rules and the use of shared facilities;
- the unique nature of residential park tenancies due to the fact that a person can own their own dwelling, but not the land on which it is situated⁹; and
- relocation of residential park dwellings can often be difficult and costly.

A summary of the key differences between the Residential Tenancies Act and the RPLT Act is at Appendix C.

4.2 OBJECTIVES

The RPLT Act was introduced with the objective of providing greater contractual certainty for long-term residents of caravan parks and park operators¹⁰. It was envisaged that the RPLT Act would promote a level, competitive playing field for park operators, which did not unduly interfere with their right to run their business.

⁸ *Statutory Review of the Residential Tenancies Act 1987 (WA): Final Report: 2002*, Stamfords Advisors Consultants – recommendation 148

⁹ Except for some strata titled lots

¹⁰ Mr J.C. Kolbelke, Second Reading speech: Residential Parks (Long-stay) Tenants Bill 2005, 20 October 2005

It is also understood that many long-stay tenants expected the RPLT Act would provide them with security of tenure, particularly tenants who owned their home, but who had a periodic tenancy agreement, or in some instances a 'handshake' arrangement with the park operator. However, in its 2009 Report, EISC explains the RPLT Act 'simply crystallised what, in fact, were already quite tenuous tenancy arrangements. It was also unfortunate that the passage of this Act coincided with a marked increase in land values in Western Australia, which has led to the closure and redevelopment of many caravan parks'¹¹.

To the extent that the RPLT Act does not provide tenants with security of tenure, there is a perception of regulatory failure. As the RPLT Act deals with the leasing, as opposed to freehold ownership, of land by residents, it is questionable whether the legislation can deliver security of tenure (such as would occur through the ownership of land) without fundamentally affecting the supply and business modelling that underpins the provision of this form of accommodation. As explained in the 2009 EISC report, 'The fact remains that any person entering into a tenancy agreement where they do not own the land will always face the uncertainty of eviction, whether or not they perceive this uncertainty to exist'¹². It can be argued that if people are not paying the premium required to obtain freehold title, they cannot expect to obtain the benefits that freehold title brings with regards to security of tenure.

Therefore, it is important to ensure that the purpose of regulating this area is clearly defined and understood by the parties. Failing to adequately balance the competing interests of the parties would be considered as regulatory failure as it could lead to an inefficient allocation of resources through under or over investment in this sector.

Two fundamental objectives have guided the review process - certainty of contract and fair dealings between the parties. Achieving these objectives should ensure that, to the greatest extent possible, the RPLT Act adequately balances the demands of long-stay residential park tenants for greater security of tenure, while supporting the maintenance of existing residential parks and the development of new residential parks.

Certainty of contract relates to the content and enforcement of the agreement that is reached between the parties. Certainty of contract is achieved when:

- clarity is achieved– the lease agreement is comprehensive and clear;
- no surprises are allowed – all elements of the agreement are understood by both parties; and
- the deal is honoured – no changes are made without consent and the parties honour their obligations under the agreement.

¹¹ Economics and Industry Standing Committee - Provision, Use and Regulation of Caravan Parks and Camping Grounds in Western Australia – Report No.2, Part 2, 2009, page 325

¹² Economics and Industry Standing Committee - Provision, Use and Regulation of Caravan Parks and Camping Grounds in Western Australia – Report No.2, Part 2, 2009, page 276

The concept of fair dealings relates to how the parties interact with each other throughout all the stages of a long-stay agreement from negotiation through to its end. This objective is achieved by:

- allowing freedom to contract – the parties should be free to negotiate an agreement without unnecessary legislative intervention;
- preserving core rights and obligations – ensuring legislation sets appropriate standards in relation to lease terms and reinforcing community expectations of fair behaviour; and
- facilitating a level playing field – by including regulatory mechanisms to address any imbalance in bargaining power between tenants and park operators, and to ensure the consistent application of regulation across the sector.

These overarching objectives have formed the basis of how each proposal in this paper has been assessed. Consideration has also been given to ensuring that the legislative framework is appropriate and dispute resolution mechanisms are adequate.

4.3 ISSUES NOT ADDRESSED BY THE RPLT ACT

The RPLT Act regulates the tenancy arrangements between tenants and park operators and, as such, cannot address broader issues affecting the residential parks sector, for example:

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

5 LEGISLATIVE FRAMEWORK

5.1 KEY ASPECTS OF THE RPLT ACT

The RPLT Act applies to agreements between park operators and tenants, where the tenant either owns a dwelling and leases a site, or leases both the site and dwelling in the park.

By way of overview, the RPLT Act deals with the form and content of long-stay agreements, pre-contractual disclosure, rent and other fees and charges, community aspects of park living, termination and dispute resolution.

The *Residential Parks (Long-stay Tenants) Regulations 2007* (RPLT Regulations) are prescribed under the RPLT Act and set out specific provisions in relation to matters such as the making of park rules and forms required to be used under the RPLT Act. The RPLT Regulations also include, as schedules, four standard contracts which set out the clauses and other information which must be included in all long-stay agreements.

The State Administrative Tribunal (SAT) undertakes a dispute resolution function under the RPLT Act and has the power to make various orders, including orders terminating an agreement, for vacant possession and varying the rent.

The Commissioner for Consumer Protection (Commissioner) has a number of statutory functions under the RPLT Act including advisory, conciliation and compliance functions.

5.2 CARAVAN PARKS AND CAMPING GROUNDS ACT

While outside the scope of this statutory review, it is important to note the role of the *Caravan Parks and Camping Grounds Act 1995* (the CPCG Act) in governing the operation of residential parks generally. The CPCG Act is administered by the Department of Local Government and Communities, 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 is required to keep 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 park¹³.

The CPCG Act requires park licences to be renewed annually¹⁴. 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.

¹³ *Caravan Parks and Camping Grounds Act 1995* - section 14; *Caravan Parks and Camping Grounds Regulations 1997* - regulation 66

¹⁴ *Caravan Parks and Camping Grounds Act 1995* - section 8; *Caravan Parks Camping Grounds Regulations 1997* - regulation 52

The *Caravan Parks and Camping Grounds Regulations 1997* (CPCG Regulations) set out specific requirements for park operators in relation to matters such as the provision, maintenance and cleaning of park facilities, access to facilities, keeping registers, allocating sites and construction standards. The CPCG Regulations also include a requirement that any person who constructs, assembles or carries out any work on a park home must do so in accordance with the relevant requirements of the Building Code¹⁵ and that the park operator and the relevant local government authority must sight evidence of this fact¹⁶.

The CPCG Regulations also impose obligations on home owners and renters in parks in relation to factors such as construction standards, maintenance of caravans and sites, control of animals and speed limits.

A review of the CPCG Act is currently being undertaken by the Department of Local Government and Communities, with a view to developing new legislation. A consultation paper in relation to this review was released in May 2014¹⁷. That paper stated that it is proposed that the new legislation will focus on holiday parks, with residential parks (i.e. park home parks and lifestyle villages) to be assessed as residential developments under relevant development and planning policies¹⁸.

The CPCG Act consultation paper also proposed that the licence period for caravan park licences be extended to five years¹⁹. This proposal may address concerns regarding the limitations associated with the current one year licence period.

5.3 BUILDING LEGISLATION

Under the CPCG Act, caravans are not required to comply with building codes and standards as they are regulated as vehicles through the vehicle licensing process.

The construction or erection of a manufactured home or park home is classed as building work under the *Building Act 2011*²⁰. Currently, a building permit is not required for building work for a park home or annex²¹, due to the certification requirements imposed under the CPCG Act in relation to this type of work (see part 5.2). However, park homes and annexes are required to be constructed in accordance with the relevant requirements of the applicable building standards²², these standards are set out in the Building Code²³.

¹⁵ *Caravan Parks and Camping Grounds Regulations 1997* - regulation 33

¹⁶ *Caravan Parks and Camping Grounds Regulations 1997* - regulations 30-32

¹⁷ Consultation Paper, Proposal for Caravan Parks and Camping Grounds Legislation, 30 May 2014, Department of Local Government and Communities; Consultation Paper, Proposal for Holiday Parks and Camping grounds Legislation, Second Consultation – August 2015, Department of Local Government and Communities

¹⁸ Consultation Paper, Proposal for Caravan Parks and Camping Grounds Legislation - Page 6

¹⁹ Consultation Paper, Proposal for Caravan Parks and Camping Grounds Legislation – Page 28

²⁰ Building Act 2011 – section 3 – the definition of building work includes the constructions, assembly or placement of a building and the assembly, reassembly or securing of a relocated building

²¹ *Building Regulations 2012* – schedule 4, item 9

²² *Building Act 2011* – section 37

²³ The Building Code of Australia – volumes 1 and 2 of the National Construction Code; *Building Regulations 2012* - regulation 31E

The Building Act provides that different standards can apply in respect of a relocated building²⁴. For example, in relation to health and safety issues (for example wind velocity rating and fire safety) standards in force at the time of the relocation will apply regardless of when the park home was built or installed. In relation to issues such as environmental standards and energy efficiency, the relevant standards will be those in force at the time the home was first built. Therefore, relocation costs can sometimes increase quite significantly where work is required in order to bring a home up to the applicable standards.

Despite the construction of manufactured homes being subject to the Building Code, there are no requirements for manufactured homes to be checked for compliance against the Building Code once the manufactured home is situated on a site in a residential park. While this issue has been identified by the WA Building Commission, it is outside the scope of this statutory review.

5.4 OTHER WESTERN AUSTRALIAN LEGISLATION

Residential Tenancies Act

The RPLT Act is underpinned by the principles of the *Residential Tenancies Act 1987* (WA). The Residential Tenancies Act regulates the tenancy arrangements between landlords and tenants in relation to the rental of homes in Western Australia. The Residential Tenancies Act continues to cover long-term residents of caravan parks and park home residents who entered into or renewed a fixed term long-stay tenancy agreement prior to 3 August 2007.

The Magistrates Court undertakes a dispute resolution function under the Residential Tenancies Act.

The Commissioner has a number of statutory functions under the Residential Tenancies Act including advisory, conciliation and compliance functions.

The Residential Tenancies Act has recently been amended²⁵. Where relevant, the changes to the Residential Tenancies Act have been taken into account under this review as there may be some benefit in introducing similar provisions into the RPLT Act. A summary of key provisions of the Residential Tenancies Act and the RPLT Act and proposals for amendment is at Appendix B.

Retirement Villages Act

Retirement villages in Western Australia are regulated under the *Retirement Villages Act 1987*.

In recent times there has been some confusion as to the difference between a lifestyle village and a retirement village, as in some instances a retirement village may be called a lifestyle village. The nature of the specific arrangements will determine which Act applies.

²⁴ *Building Regulations 2012* - regulation 31D

²⁵ *Residential Tenancies Amendment Act 2011* – which commenced on 1 July 2013

Key differences between the Retirement Villages Act and the RPLT Act relate to:

- the type of tenancy and occupancy arrangements – different ownership and occupancy rights exist in retirement villages, some contracts are in the form of a licence or lease giving a right to occupy, others allow the resident to purchase the premises outright as a strata title unit or acquire ownership through a purple title arrangement;
- the permanency of tenure – greater security of tenure is provided for residents of retirement villages; and
- the fact that the CPG Act currently applies to a residential park.

Retirement villages often involve a more significant financial commitment than residential parks. For example, before entering a retirement village, most residents are required to pay an entry fee, known as a premium. Premiums are not permitted under the RPLT Act. Residents in retirement villages are also required to pay recurrent charges to cover the operating and service costs in relation to the village, in some instances levies are payable (which might include a component for maintenance or capital replacement) and exit fees are often payable.

5.5 REGULATION OF RESIDENTIAL PARKS IN OTHER JURISDICTIONS

The structure and nature of residential parks legislation varies across the jurisdictions, reflecting the divergent nature of the market across Australia. References to specific provisions of legislation in other jurisdictions are included throughout this paper.

6 SCOPE OF TENANCIES COVERED BY THE ACT

6.1 RENTERS OF BOTH SITE AND DWELLING (RENTERS)

Issue

Whether the RPLT Act is the appropriate legislation for the regulation of renters.

This tenancy arrangement is structurally similar to traditional residential tenancies covered under the Residential Tenancies Act in that the dwelling and the land are rented together. Consequently, the moveability of the dwelling is not an issue as it is not owned by the park renter. The key difference between renting in a park and renting in the general community is the communal aspects of park living that may, but generally do not, feature in other tenancies.

Objective

Identify the most appropriate legislation for regulation of renters in residential parks.

Recommendation

Option A (status quo) - that long-stay agreements with renters continue to be subject to the RPLT Act.

Statutory Review Report

Option A was the preferred option in the Statutory Review Report as it adequately addresses the needs of renters without compromising the rights and responsibilities of park operators or other tenants who are home owners.

This option also eliminates the need for any changes to business practices and documentation which can be costly. Having to comply with a single Act minimises the risk of confusion for renters and park operators.

The Residential Tenancies Act was amended on 1 July 2013. Where appropriate, it is proposed to mirror these amendments in the RPLT Act so that tenants are treated equitably irrespective of the nature of the premises they lease. A table showing the amendments that are proposed to be mirrored in the RPLT Act is included at Appendix C.

All stakeholder responses to the report were in favour of retaining the status quo.

Background

This issue impacts on mixed-use parks only, as lifestyle villages and park home parks do not have renters. Renters represent a relatively small proportion of the long-stay market. The Department's research reveals that approximately ten per cent of long-stay tenants are renters.

The C-RIS contemplated that unless there was compelling support to the contrary, renters would remain subject to the RPLT Act.

C-RIS Proposals:

Option A – Status quo

No change. Long-stay agreements with renters would continue to be subject to the RPLT Act.

Option B – Renters to be regulated under the Residential Tenancies Act 1987

Exclude renter agreements from the RPLT Act and amend the Residential Tenancies Act to deal with the contractual arrangements between landlord and tenant in renter agreements. Other aspects of residential park living, such as park rules, responsibility for common areas and park liaison committees continue to be regulated under the RPLT Act.

Stakeholder views

	Survey responses			Written submissions		
	Option A	Option B	Other (no view)	Option A	Option B	Other
Tenants	16	4	19	-	-	-
Park operators	5	2	4	4	-	-
Other	-	-	-	2	1	-
TOTAL	21 (42%)	6 (12%)	23 (46%)	6 (86%)	1 (14%)	-

There is majority support amongst the written submissions and from those who expressed a view in the survey responses for Option A, to retain the regulation of renters under the RPLT Act. Feedback in the survey responses centred around the unique nature of residential park living; irrespective of whether the long-stay tenant is a home owner or renter,²⁶ and the efficiency for both park operators and long-stay tenants in having to be familiar with only one piece of legislation as reasons for retaining the regulation of renters under the RPLT Act.²⁷

Survey respondents who supported having renters regulated by the Residential Tenancies Act appear to be mostly home owners, who are of the view that the RPLT Act is trying to cater for too many varied arrangements and, therefore, does not adequately protect the significant investment they individually make in purchasing a home and placing it on leased land.²⁸ These respondents advocate for renters to be regulated by the Residential Tenancies Act and that the RPLT Act be overhauled to focus solely on home owners.

²⁶ Survey responses

²⁷ NLV, Riverside Gardens

²⁸ Survey responses

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">• Parties would only need to be familiar with the RPLT Act.• Many established business practices developed since the introduction of the RPLT Act would be maintained.	<ul style="list-style-type: none">• Differences in regulation between general tenants and renters are likely to occur and become more apparent over time.
Option B – Regulate renters under the Residential Tenancies Act	<ul style="list-style-type: none">• Renters in residential parks would be treated consistently with general tenants.• RPLT Act could be more tailored as it would only regulate long-stay agreements with home owners.	<ul style="list-style-type: none">• Park operators would have to be familiar with two pieces of legislation. May result in an increase in compliance costs.• There may be confusion in knowing which jurisdiction to commence action in if a dispute involves contractual and common area or park operator conduct issues.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Minimal impact. Park operators would continue to operate under a single statute. No change required to existing business documents and practices.
- Option B – Negative impact. Park operators would be required to comply with two tenancy Acts. There may be a need for businesses to change existing lease documentation and practices to accommodate the legislative change.

There may be confusion and increased costs in determining the appropriate dispute resolution forum (the State Administrative Tribunal or the Magistrates Court) if a dispute involves both contractual issues (individual leases) as this would clearly fall within the Residential Tenancies Act and communal issues, such as park operator conduct, repairs and maintenance of common facilities and park rules as these latter issues remain within the RPLT Act and therefore may be the jurisdiction of the SAT.

Home owners:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Minimal impact. May have the benefit of allowing the RPLT Act to be more specifically tailored to home-owners.

Renters:

- Option A – Minimal impact. Renters' rights and responsibilities would continue to be regulated under the RPLT Act.

- Option B – Negative impact. Renters would have to become familiar with rights and responsibilities under new legislation. As with park operators, confusion may arise as to which jurisdiction to commence an action in if a dispute involves aspects arising under both pieces of legislation (e.g. lease and park rules). Further, renters would not be treated in the same manner as home owners on important issues such as park rules.

Government:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Negative impact. The Residential Tenancies Act would need to be amended to accommodate renters living in residential parks to address issues that are unique to the communal living aspects of the park lifestyle. There may be increased applications to the Magistrates Court by renters however this would likely be offset by a corresponding reduction in applications by renters to the SAT.

Assessment against the objective

- Option A – The RPLT Act appears to be the most appropriate legislation under which to continue to regulate residential park renters. The RPLT Act can adequately cater for the differences between renters and home owners without compromising the rights and responsibilities of either group.

This option allows park operators to continue to operate under one piece of legislation, which minimises the scope for confusion for tenants and park operators and avoids increased costs associated with park operators having to change business documentation and practices.

- Option B – The shift of renters from the RPLT Act to the Residential Tenancies Act may cause confusion and additional compliance costs for park operators to accommodate the change. In the absence of a compelling reason to make the shift, these costs outweigh any benefits that might be achieved.

6.2 REGULATION OF STRATA TITLED CARAVAN PARKS

Issue

Whether the RPLT Act is the appropriate legislation for the regulation of tenancy arrangements in strata parks.

Objective

To apply the most appropriate form of regulation to strata residential parks and the different tenancy arrangements within strata parks.

Recommendation

Option A (status quo) – that strata park tenancies continue to be covered by the RPLT Act.

Statutory Review Report

Option A (status quo) was the preferred option in the Statutory Review Report as it would result in the least amount of confusion for all parties, and the least amount of costs for strata park owners who would otherwise have to amend business practices and documentation to comply with the Residential Tenancies Act if Option B were implemented. Any benefits that might arise from implementation of Option B would be outweighed by the costs.

The report acknowledged that historically it was not intended for strata parks to be regulated under the RPLT Act and that the preferred option represents a change to the course of action stated in the discussion paper. However, on further investigation and consideration, market failure in the current regulatory framework could not be identified so as to warrant amending the RPLT Act and regulating strata park tenancies under the Residential Tenancies Act.

In noting that Option A was the preferred option, it was acknowledged that some parts of the RPLT Act specifically contemplate a single owner of the residential park and it is therefore more difficult for strata parks, where there are multiple owners, to comply with these provisions. An example of such a provision is the requirement to have a park liaison committee. It is therefore proposed to modify the operation of the RPLT Act in some parts to specifically accommodate the strata park scenario.

Only one stakeholder response to the report did not favour retaining the status quo²⁹.

Background

Determining which statute is the appropriate piece of legislation with which to regulate strata parks is not a straightforward matter. Some of the factors that must be taken into account include:

- strata park renters should have similar legislative safeguards to tenants under the Residential Tenancies Act;
- tenancy laws for strata park home owners should take into account the ownership of their dwelling and consequently, the greater costs and difficulty in leaving a park than renters (it is recognised that the current provisions of the Residential Tenancies Act are not tailored to address this unique tenancy arrangement);
- tenancy laws for strata parks do not necessarily need to make provision for the conduct of occupants or the maintenance of common property as these matters are dealt with under the *Strata Titles Act 1985*; and
- the ownership structure in a strata park is different from that contemplated by the RPLT Act.

Strata parks by their nature have some similarities to strata scheme rentals (for example, apartment blocks), which are regulated under the Residential Tenancies Act, and also with mixed-use residential parks, which are regulated under the RPLT Act. For example, like a multi-unit strata complex, each site in a strata park is capable of being individually owned and either occupied by the owner or rented out. Consequently, in a strata park, there may be a number of owners of rented sites (as there would be a number of landlords for rented units in a multi-unit strata complex).

²⁹ Hayes

However, strata parks, like mixed-use caravan parks, can have different leasing arrangements within the one park. For example, in a strata park there may be renters, home owners and people who own both the land and the home on it. This fact distinguishes them from Residential Tenancies Act tenancies.

While it may appear at face value to be an evenly balanced decision as to whether to regulate strata parks under the RPLT Act or the Residential Tenancies Act, this is not necessarily the case. A key consideration that influences the balance is that in strata parks, long-stay tenants who are home owners have far more in common with other home owners under the RPLT Act than they do with general tenants under the Residential Tenancies Act. For example, termination of a tenancy agreement and compensation. This is because tenants under the Residential Tenancies Act never own the premises in which they reside and therefore the Residential Tenancies Act does not address the need for the greater timeframes at termination of the tenancy agreement to allow for removal of the premises, nor does it account for matters such as compensation that may be payable if a tenant is forced to move their premises for reasons outside of their control.

There are an estimated nine strata titled caravan parks (strata parks) in WA³⁰. Long-stay tenancies in strata parks are currently covered by the RPLT Act.

The initial discussion paper circulated as part of this statutory review noted that although strata titled caravan parks are covered by the RPLT Act, it was originally intended that they be covered under the RT Act. The policy reason at that time for excluding strata titled caravan parks from the RPLT Act was that sites at strata titled caravan parks are owned by a number of individual owners rather than a single owner whereas the residential parks business model is based on one park owner per residential park. As such the Residential Tenancies Act was viewed as the most appropriate way in which to regulate such arrangements.

The discussion paper went on to note that it was a drafting oversight that resulted in the regulation of strata titled caravan parks remaining with the RPLT Act. In conclusion, the discussion paper proposed that the RPLT Act and the Residential Tenancies Act would be amended to give effect to the original intention.

In the course of drafting the C-RIS, further consideration was given to the question as to whether amending the Residential Tenancies Act to regulate strata parks would deliver positive net benefits or whether any costs associated with the change would outweigh any perceived benefits. For example, complaint data obtained between 2007 and 2013 does not suggest any systemic tenancy issues for strata parks that would indicate a need for regulatory amendment. As a consequence, the matter was addressed in the C-RIS.

³⁰ Since 1 July 1997, the strata titling of caravan parks has been prohibited under the *Caravan Parks and Camping Grounds Act 1995*. Therefore there is no expectation of the number of strata parks ever increasing

C-RIS Proposals:

Option A – Status Quo

Under this option, strata park tenancies would continue to be covered by the RPLT Act, including any amendments made as a result of this review. Consideration would need to be given to tailoring any amendments from this review to strata park tenancies, such as:

- matters covered by the *Strata Titles Act 1985*; or
- park level communal aspects, like a park liaison committee, as such a committee implies there is only one owner administering all the tenancies in the park (strata park tenants could discuss any tenancy matters direct with the individual site owner).

Option B – Move strata park renters to the Residential Tenancies Act and retain strata park home owners in the RPLT Act

Under this option, strata park renters would be covered by the Residential Tenancies Act as they are similar to general tenants in that the land and dwelling are rented together, while home owners would be covered by the RPLT Act.

Stakeholder views³¹

	Written submissions		
	Option A	Option B	Other
Tenants	-	-	-
Park operators	4	-	1
Other	2	1	-
TOTAL	6 (75%)	1 (12.5%)	1 (12.5%)

There is support for Option A, in that strata parks continue to remain regulated under the RPLT Act. Those in favour of Option A point to the certainty and absence of confusion offered by that option. Their concern is that if long-stay tenants of strata parks, or even just renters within strata parks, are regulated under the Residential Tenancies Act, a two tier system of regulation will emerge which will lead to confusion for all parties, and will lead to unrealistic expectations as rights and responsibilities under one statute are amended and therefore fall out of alignment with the rights and responsibilities afforded under the other statute.³²

The CIAWA, in its submission, noted that the rights and responsibilities of a long-stay tenant in a strata park do not differ substantially to the rights and responsibilities of any other long-stay tenant in any other residential park, and that these rights and responsibilities are appropriately catered for under the RPLT Act.

³¹ The survey did not ask any questions regarding this issue as it affects only a small number of residents and parks. Therefore only the views of those who made written submissions are included here

³² CIAWA, Aspen Parks, NLV, Carine Gardens

COTA supported regulating renters under the Residential Tenancies Act and leaving home-owners in strata parks to be regulated under the RPLT Act. COTA was of the view that this would make the RPLT Act less complicated for park operators and residents. Mr Hayes, an owner of strata lots in a strata park, advocated that all strata park tenancies be regulated under the Residential Tenancies Act as per the original policy intention when the RPLT Act was introduced.

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Parties would only need to be familiar with the RPLT Act. • All long-stay tenants would be subject to the same law regardless of the residential park being occupied. • Many established business practices developed since the introduction of the RPLT Act would be maintained. 	<ul style="list-style-type: none"> • Differences in regulation between general tenants and strata park renters are likely to occur and become more apparent over time.
Option B – Move strata park renters to the Residential Tenancies Act and retain strata park home owners in the RPLT Act	<ul style="list-style-type: none"> • Would ensure similar regulation for traditional tenants and strata park renters in the short and long-term. 	<ul style="list-style-type: none"> • Would require site and dwelling owners and renters to become familiar with the Residential Tenancies Act and make adjustments to current practice where there are any differences. <ul style="list-style-type: none"> ○ This may cause confusion, particularly during the transition period; and ○ This may increase business costs. • An owner of multiple strata park sites would need to become familiar with two statutes if renting to both renters and home owners. • If a strata park operates under both the RPLT Act and the Residential Tenancies Act, confusion will arise as to which Act is to be applied in the case of a dispute surrounding the use of common areas, park rules etc. • May result in renters in mixed-use parks, who would continue to be regulated under the RPLT Act, being treated differently at law from renters in strata parks and tenants in traditional tenancies in the long term.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Park operators in strata parks would continue to operate under a single statute. No change required to existing business documents and practices.
- Option B – Negative impact. Site owners in strata parks would need to comply with both the RPLT Act and the Residential Tenancies Act. If a person owned more than one site and offered both site only and on-site rentals, the site owner would have to establish business practices and documentation relevant to both Acts. If a strata park consists of both on-site rentals and site only rentals, both Acts will apply, however, confusion will arise as to which statute is to be applied if the dispute centres around the common areas or such matters as park rules.

Home owners and renters:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Negative impact. Conflict may arise if a home owner in a strata park is being treated differently to a renter in a strata park as a consequence of different laws applying to each party.

Government:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Negative impact. May result in increased costs associated with compliance and dispute resolution as there will be overlap between SAT jurisdiction under the RPLT Act and the Magistrates Court jurisdiction under the Residential Tenancies Act.

Assessment against the objective

- Option A – Will retain consistency of approach within the strata park between renters and home owners. Will lead to least amount of confusion and costs for park operators.
- Option B – Will result in different laws applying to renters and home owners within a single strata park. May lead to increased cost for park operators if operating under two different statutes. Will lead to confusion and increased cost in dispute resolution, particularly if a dispute arises regarding the use of common areas and park rules or park liaison committees.

7 CONTRACTING OUT OF THE ACT

7.1 ROLLING SHORT TERM CONTRACTS

Issue

There is evidence to suggest that there are some park operators who are offering tenants rolling fixed term leases of 89-days (or less) in order to avoid the tenancy being subject to the provisions of the RPLT Act. This issue predominantly affects home owners of moveable dwellings in mixed-use parks, who do not have access to statutory safeguards provided by the RPLT Act if they enter into such an arrangement³³. Rolling 89-day fixed term leases take advantage of an unintended loophole in the current legislation, as it was always intended that the RPLT Act would extend to all non-holiday stays at a residential park³⁴.

Objective

To ensure that all long-stay tenancy agreements in a residential park are provided with appropriate legislative protection.

Recommendation

Option B – that the RPLT Act apply to all tenancies entered into for non-holiday purposes, subject to some exceptions.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it would ensure that the RPLT Act applies to all persons living in a residential park as their principal place of residence. Option B is modelled on the approach taken in other jurisdictions, such as Queensland, South Australia and New South Wales and is consistent with the approach across Australia not to include a qualifying time period in order for the legislation to apply.

A majority of stakeholders supported this option in response to the report; however a number of park operators requested clarification as to what will constitute a 'holiday' stay³⁵. The Department intends to provide clarification to the sector regarding the indicia that may suggest the accommodation is not being used for holiday purposes i.e. the accommodation is being occupied as a person's sole or main place of residence.

Park operators also requested clarification regarding the use of 'trial' periods in mixed-use parks. The Department will ensure that the sector is aware that the position presented in the Statutory Review Report (ie. the RPLT Act will permit the parties to agree on a 'trial' period for easily relocatable dwellings, such as caravans, in mixed-use parks) has not changed.

³³ The Residential Tenancies Act also does not apply to such tenancies effectively leaving them unregulated – see section 5(6) of the Residential Tenancies Act

³⁴ Residential Parks (Long Stay Tenants) Bill 2005 – Second Reading Speech – 20 October 2005

³⁵ CIAWA, NLV and Discovery Parks

Background

The RPLT Act applies to tenancy agreements that are:

- for a fixed term of three months (90 days) or more; or
- periodic agreements that continue for three months or more.

The RPLT Act does not apply to agreements entered into for the purpose of a holiday or which confer a right to occupy a site on an employee or agent of the park operator³⁶.

This enables short term stays at a park for a holiday or other purpose to be entered into without imposing on a park operator the increased regulatory burden that accompanies long-stay agreements.

Legislation in most other jurisdictions does not specify a minimum tenancy period, but provides that the legislation is not to apply to agreements entered into for the purposes of a holiday³⁷. The legislation generally specifies that if a lease extends beyond a certain period, for example, 60 days, that it will be deemed to not be entered into for the purpose of a holiday (in the absence of evidence to the contrary).

The Residential Tenancies Act applies a similar test and does not apply to a tenancy agreement entered into for the purposes of a holiday, with agreements for 3 months or longer deemed not to be for holiday purposes (in the absence of proof to the contrary)³⁸.

Some Acts in other jurisdictions only apply to agreements where the residential park dwelling is to be the person's principal place of residence³⁹. Some jurisdictions also specifically exclude certain types of arrangements from the application of the legislation, for example, agreements with employees or itinerant workers and sites used for casual occupation (where a person rents a site for a caravan for a long period, but only stays at the park for holiday stays).

³⁶ RPLT Act – section 5

³⁷ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) – section 31; *Residential Parks Act 2007* (SA) – section 5; Residential Tenancies Act – section 5

³⁸ Sections 5(2)(e) and 5(4)

³⁹ *Residential Parks Act 2007* (SA) – section 5; *Residential Tenancies Act 1997* (Vic) - section 3 (definition of 'resident')

C-RIS Proposals:

Option A – Status quo

The RPLT Act to apply to tenancy agreements that are:

- for a fixed term of three months (90 days) or more; or
- periodic agreements that continue for three months or more.

Option B – Amend the RPLT Act to apply to all tenancies entered into for non-holiday purposes, subject to some exceptions.

Under this option the RPLT Act would be amended to apply to all non-holiday leases in a residential park, regardless of the lease term, but provide operators with enough flexibility to continue offering short-term tenancies.

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

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

In the case of lease arrangements for easily relocatable dwellings (such as caravans) in mixed-use parks, the Act could provide both parties with the ability to agree on an initial 'trial' period. Provisions would be included to make sure that both parties understand the implications of entering into a short-term arrangement.

Stakeholder views

	Written submissions ⁴⁰	
	Option A	Option B
Tenants	-	6
Park operators	5	-
Other	-	1
TOTAL	5 (45%)	6 (55%)

The C-RIS proposed that the RPLT Act be amended as proposed in Option B.

⁴⁰ This issue was not addressed in the survey.

Tenants and their representatives⁴¹ support Option B. Shelter WA⁴² is of the view that 'the use of rolling short-term contracts is an inequitable way for park operators to prevent tenants from accessing safeguards under the RPLT Act. This change will provide more adequate security of tenure for all long-stay tenants utilising residential parks.' Tenancy WA stated that it 'received feedback from long-term tenants that some park operators issue short-term leases, possibly with the intent to evade the provisions of the RPLT Act. We have concerns that this behaviour precludes park residents from claiming the rights and responsibilities of a long-stay tenant under the legislation.'

The Department of Housing is of the view that 'amendments to the RPLT Act should ensure all occupants who choose to make residential parks their principal place of residence receive the similar rights, responsibilities and safeguards of similar households in the private market. The application of similar tenant safeguards, regardless of lease term, would close the loophole for rolling, short term tenancies.'

Park operators and their representatives do not support the changes proposed in Option B and are of the view that it would add unnecessary complexity⁴³. CIAWA is of the view that to 'define long-stay in any manner other than the length of stay will simply open up a further range of "loopholes" as residents and owners alike endeavour to determine whether they are or are not covered by an exemption.'

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Potential for operators to avoid the application of the RPLT Act by offering rolling fixed term contracts of 89-days or less. 	<ul style="list-style-type: none"> • Relatively simple test to determine the application of the RPLT Act.
Option B – RPLT Act to apply to all tenancies entered into for non-holiday purposes	<ul style="list-style-type: none"> • Closes loop-hole and limits the ability of operators to avoid the application of the RPLT Act. • Ensures that all persons living in residential parks for non-holiday purposes are afforded the protections of the RPLT Act. • Consistent with the approach applied in the Residential Tenancies Act. 	<ul style="list-style-type: none"> • May be more complex than current provisions.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Park operators are able to offer rolling short-term contracts and avoid the need to comply with the RPLT Act.

⁴¹ COTA, PHOA, Watt, Goldfields CLC, Shelter WA, WACOSS, Tenancy WA

⁴² Supported by WACOSS

⁴³ CIAWA, Carine Gardens, Aspen, NLV

- Option B – Negative impact. Limits ability of operators to contract out of the RPLT Act. May impose a greater regulatory burden and additional compliance costs on some operators.

Home owners and renters:

- Option A – Negative impact. Some tenants may not be afforded the protections of the RPLT Act, despite the fact that a residential park is their principal place of residence and they live there for a long period.
- Option B – Positive impact. Ensures that the RPLT Act applies to all persons living in a residential park as their principal place of residence.

Government:

- These options are expected to have only minimal impact.

Assessment against the objective

- Option A – Park operators would be able to avoid the application of the RPLT Act.
- Option B – Ensures the RPLT Act applies to all persons living in a residential park as their principal place of residence.

7.2 CONTRACTING OUT

Issue

The RPLT Act currently permits the parties to a long-stay agreement to contract out of specified rights and obligations. This issue concerns whether it is appropriate for the parties to be permitted to contract out of these requirements.

Objective

To preserve the basic rights and obligations of tenants and park operators set out in the RPLT Act, while still allowing the parties to negotiate tenancy agreements that are suitable to a diverse range of tenancies and parks.

Recommendation

Option B – prohibit lease agreements from varying or excluding key provisions.

Statutory Review Report

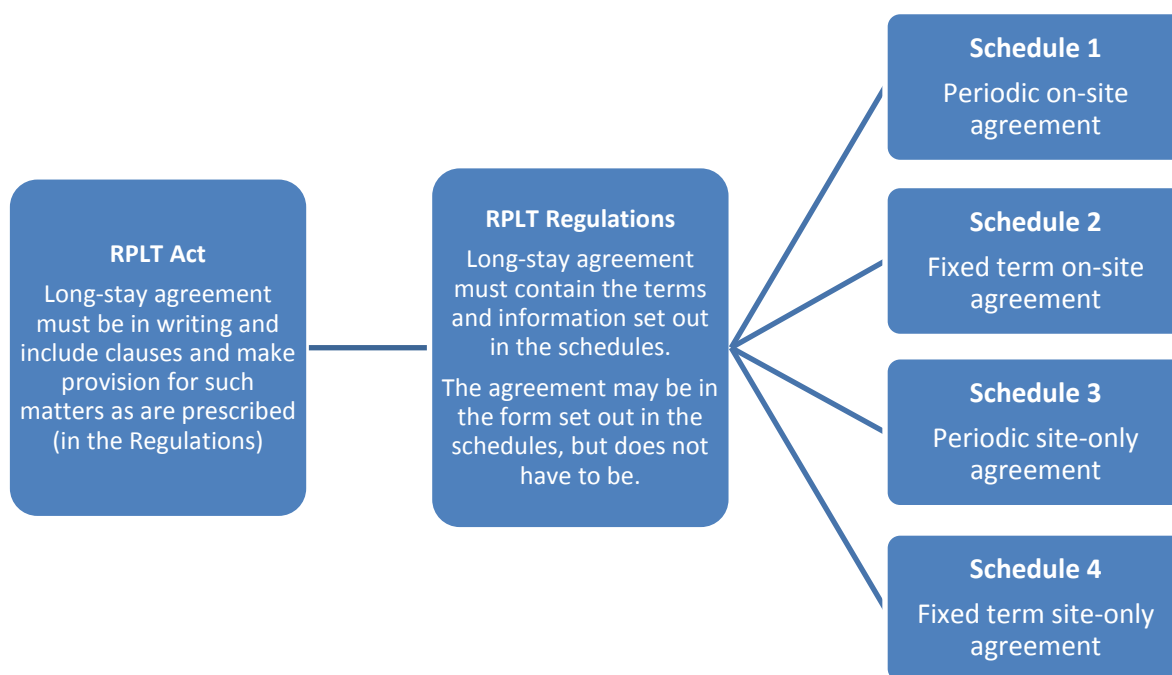
Option B was the preferred option in the Statutory Review Report as it would go some way to addressing the imbalance in bargaining power between tenants and park operators and to ensure that the key rights and obligations of the parties to a long-stay agreement are preserved and implemented consistently across the sector.

In responding to the report, stakeholders largely re-confirmed their prior position on this issue, with tenant responses reflecting support for this option and park operator responses opposing it. However, a number of park operators suggested that, in the event Option B is recommended, some flexibility should be incorporated in order to allow other terms to be included in the lease agreement provided they are consistent with the standard terms⁴⁴. It was argued that this would allow the parties to reflect unique selling points of the business in the lease (eg. all residents must be owner occupiers) or ensure that operators are able to maintain consistent standards in their park (eg. standardised cleanliness provisions).

Based on stakeholder feedback, the Department intends to review the Schedule 1 standard terms to ensure they provide only the minimum standard which must be adhered to and cannot be contracted out of. Further clarification will also be provided to the sector to confirm that the parties will be permitted to agree to include other related provisions in the lease agreement provided they are consistent with, and supplement, the relevant standard term.

Background

A long-stay agreement must be in writing⁴⁵ and may, but is not required to, be in the standard form⁴⁶; however it must include all the clauses and other information set out in the relevant standard form agreement.



Generally the parties to a long-stay agreement are not permitted to contract out of or restrict the operation of the RPLT Act⁴⁷, however certain provisions of the RPLT Act permit contracting out of the Act in certain circumstances.

⁴⁴ Confidential operator and NLV

⁴⁵ RPLT Act – section 10

⁴⁶ RPLT Regulations - regulations 4-7 and schedules 1-4

⁴⁷ RPLT Act - section 9

Section 32(2) of the RPLT Act currently permits the parties to a long-stay agreement to contract out of (i.e. exclude, modify or restrict) specific rights and obligations (set out in Schedule 1 of the RPLT Act) upon agreement by both parties; these are summarised below:

Right or obligation		Impact of excluding
Vacant possession	Vacant possession of the premises to be given on commencement of long-stay agreement.	There may be someone else in occupation of the premises.
No legal impediment to occupation of tenanted premises	No reason why the tenant cannot occupy the premises as a residence.	The tenant may be unable to use the premises due to circumstances beyond their control.
Responsibility for cleanliness	The long-stay tenant must keep the premises clean.	Obligations unclear. May impact on other residents.
Responsibility for damage	Tenant must not intentionally or negligently cause damage and must notify the park operator of any damage.	Obligations unclear. May impact on other residents.
Park operator's responsibility for cleanliness and repairs	Park operator must provide and maintain the premises in a reasonable state of cleanliness and repair. The park operator must also comply with other health and safety laws.	Obligations unclear. Limits possible grounds for taking action in the SAT by the tenant.
Compensation where tenant sees to repairs	Park operator must compensate tenant for reasonable expenses incurred in making urgent repairs. Certain conditions and procedures must be complied with.	Tenant may be financially disadvantaged if they see to repairs. No agreed processes to ensure repairs are done properly.
Tenant's conduct on premises	Tenant must not cause or permit a nuisance or use the premises for illegal purposes.	May impact on other residents. Criminal activity in parks.
Locks	Park operator to provide locks for on-site homes. No change or removal of any locks without consent and/or notification.	Lack of guidance could lead to people being locked out of homes or shared premises.
Park operator's right of entry	Park operator may enter premises with consent or in an emergency for inspection and maintenance. Sets out notice requirements.	Park operator could enter the premises at any time, and without notice. Increases potential for disputes.
Tenant's right to remove fixtures or alter premises	Sets out circumstances in which the tenant may be permitted to add fixtures to the premises.	No guidance on whether fixtures can be placed on premises and circumstances for doing so. Increases potential for disputes.

Right or obligation	Impact of excluding
Rates, taxes and charges paid by park operator	Park operator to bear the costs of all rates, taxes and water charges. Tenant required to bear costs associated with land ownership. Risk that the requirement not applied consistently across all tenants.
Provision for assigning or subletting the premises	Provides options for park operator to either approve or not approve sub-letting and/or assignment. Rights and obligations of the parties are unclear. Increases potential for disputes.
Tenant's vicarious responsibility for breach of agreement	Tenant vicariously responsible for acts or omissions of guests. Liability for actions of visitors unclear.

At the time the RPLT Act was enacted, section 32(2) was based on, and was consistent with, the equivalent provision of the Residential Tenancies Act⁴⁸. However, following a review of the Residential Tenancies Act, that provision was recently amended to prohibit any form of contracting out of the provisions of that Act⁴⁹. This amendment was made for consistency with other jurisdictions and to ensure that a fundamental set of rights and obligations for landlords and tenants is protected. The review of the Residential Tenancies Act found that tenants rarely had a say as to whether parts of the Act were contracted out of in an agreement and that the majority of contracting out was done in favour of the landlord, who in many instances was in a better bargaining position than the tenant.

There are further provisions in the RPLT Act which permit the parties to contract out of the Act. These include:

- section 14 – which provides that the park operator must bear the costs of preparing a long-stay agreement for execution by the parties, unless the agreement expressly provides otherwise. This section is discussed further at part 15.2 of this paper;
- section 30 – which sets out the provisions concerning variation of rent under an on-site agreement, unless an agreement expressly excludes or limits its operation; and
- section 55 – which provides that it is a term of a long-stay agreement that the tenant is entitled to sell a relocatable home on site, unless the agreement expressly provides that on site sales are prohibited. This section is discussed further at part 17.1 of this paper.

In other jurisdictions the parties to a residential parks contract are generally prohibited from contracting out of the legislation or the legislation provides that any inconsistent lease provision is void.

⁴⁸ Previous section 82(3)

⁴⁹ *Residential Tenancies Amendment Act 2011* – section 80

C-RIS Proposals:

Option A – Status quo

Key provisions may be excluded or varied in long-stay agreements.

Option B – Prohibit contracts from varying or excluding key provisions

Under this option the RPLT Act would be amended to prohibit any form of contracting out of the Act, including the standard terms and the requirement that park operators bear the costs of preparing the long-stay agreement.

Stakeholder views

The survey and C-RIS asked whether the respondent's long-stay agreements excluded or modified any of the standard provisions. The responses are summarised below:

	Survey responses			Written submissions	
	Yes	No	Unsure	Yes	No
Tenants	11	14	46	1	-
Park operators	4	1	2	3	-
TOTAL	15 (19%)	15 (19%)	48 (62%)	4 (100%)	-

The C-RIS and survey also asked whether there are any provisions that should be able to be varied or excluded. The responses are summarised below:

	Survey responses			Written submissions	
	Yes	No	No view	Yes	No
Tenants	7	34	26	-	1
Park operators	5	2	7	3	-
TOTAL	12 (16%)	36 (49%)	26 (35%)	3 (75%)	1 (25%)

The C-RIS proposed that the RPLT Act be amended as set out in Option B; these amendments would be consistent with recent changes to the Residential Tenancies Act and the position in other jurisdictions.

In their submissions, tenants representatives⁵⁰ support Option B as it 'will prevent inequitable tenancy contracts and will ensure all long-stay tenants have the same fundamental rights and responsibilities'⁵¹ and offers 'greater protection to the tenant, especially to people who experience difficulty in reading complex documents'⁵².

⁵⁰ PHOA, Shelter WA, WACOSS, Tenancy WA, COTA, Goldfields CLC

⁵¹ Tenancy WA

⁵² PHOA

The Department of Housing also supports Option B and states that the proposed changes ‘would safeguard tenants’ rights and ensure consistency with the [Residential Tenancies Act] While we support tenure flexibility, we are concerned about the potential negotiating imbalance between operators and tenants.’ Shelter WA and WACOSS also express concerns about the limited bargaining power of tenants.

Operators and their representatives⁵³ do not support the proposed change and instead prefer the flexibility of Option A. These respondents supported the current contracting out provisions. CIAWA⁵⁴ states ‘[t]he capacity to exercise a right to agree exemptions recognises the required flexibility to deal with the diverse range of site conditions that exist.’ One operator⁵⁵ was of the view that the standard forms are not appropriate for all parks, and it is therefore ‘essential that operators have the ability to exclude and modify provisions.’

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Greater flexibility for operators to develop contracts suitable to their circumstances, particularly in relation to mixed-use parks. 	<ul style="list-style-type: none"> • Allows for contracting out of key rights and obligations under the RPLT Act – given the imbalance in bargaining power this may be detrimental to the rights of tenants.
Option B – Implement proposal to prohibit contracting out of key lease terms	<ul style="list-style-type: none"> • Preserves the fundamental rights and obligations set out in the RPLT Act, while permitting the parties to negotiate and agree in relation to other aspects of their lease agreements. • Addresses the imbalance in bargaining power between operators and tenants. • Promotes consistency in relation to long-stay agreements across the industry. • Consistent with the approach taken in relation to residential tenancies. 	<ul style="list-style-type: none"> • Reduces flexibility for operators in relation to the contractual provisions that may be included.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Park operators would continue to be permitted to offer long-stay agreements which vary the standard clauses.

⁵³ CIAWA, Aspen, Carine Gardens, CIAA, Riverside Gardens, NLV, Confidential operator

⁵⁴ Supported by Aspen and Carine Gardens

⁵⁵ Confidential operator

- Option B – Minimal impact. Park operators would not be able to vary key provisions in long-stay agreements, but will still have the flexibility to negotiate and agree in relation to other aspects of the long-stay agreement (such as the rental and term of the lease).

Home owners and renters:

- Option A – Negative impact. Key provisions in long-stay agreements may be varied. Tenants may have limited bargaining power in negotiating relevant terms and conditions. Tenants who need accommodation may accept a varied lease which is disadvantageous to them because they have no other choice.
- Option B – Positive impact. This option is likely to be of benefit to tenants as key lease terms and conditions cannot be varied.

Government:

- These options would have minimal impact on government.

Assessment against the objective

- Option A – Key rights and obligations may be contracted out of.
- Option B – Preserves key rights and obligations of the parties.

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

Issue

Some long-stay agreements contain provisions which do not allow a tenant to register a lease or lodge a caveat. This restricts a tenant's ability to protect their interests under a lease. However, it is also recognised that the registration of a lease or a caveat against a title may impact on the park owner's ability to deal with their land. This issue is of more significance to home-owners with long-term leases as they may wish to utilise these mechanisms in order to record their interest under the lease.

Objective

To ensure that tenants have appropriate options available to them to protect their tenancy rights, without unduly restricting an owner's ability to deal with the land.

Recommendation

Option A of the Statutory Review Report (park operators can include lease provisions preventing a tenant from registering the lease or lodging a caveat).

Unless the parties agree otherwise in the lease agreement, under the Transfer of Land Act tenants will retain their right to register certain leases or lodge a caveat against the title to land in order to protect their interests under a lease.

Statutory Review Report

Option B was presented as the preferred option in the Statutory Review Report. However, the report noted that, if amendments proposed in relation to the termination of fixed term leases where the park is sold subject to vacant possession (part 10.3) or where a mortgagee enters into possession of the premises (part 10.4) are implemented, then the need to lodge a caveat would be reduced, or even no longer required.

In responding to the report, a number of park operators expressed concern at the possibility of residents forgetting to remove a caveat before they left the park. A number of park operators commented that there would be both practical and financial implications in taking action to remove a lease or caveat from the title, and these could be quite significant for a large residential park⁵⁶. This could result in additional costs being borne by the park operator or being passed on to tenant/s.

Background

The *Transfer of Land Act 1893* makes provision for tenants to register certain leases or lodge a caveat against the title to land in order to protect their interests under a lease. These rights are subject to a number of legal requirements and formalities and may therefore not be suitable in relation to the circumstances of all long-stay tenants. For example:

- leases must be for a term greater than three years in order to be registered;
- the land titles processes require clear identification of the land to which the lease relates; and
- in order to be registered, documents must be in a specified format or form.

The RPLT Act does not currently contain any provisions concerning a tenant's right to register a lease or lodge a caveat.

C-RIS Proposals:

Option A – Status quo

Park operators can include lease provisions preventing a tenant from registering the lease or lodging a caveat.

Option B – Amend the RPLT Act to prohibit lease clauses that prevent a tenant from registering a lease or lodging a caveat

Under this option the RPLT Act would be amended to provide that lease provisions preventing a tenant from registering a lease or lodging a caveat are void.

⁵⁶ Fourmi Pty Ltd, GG Corp, NLV and confidential operator

Stakeholder views

The survey asked whether tenants should be permitted to register a lease or lodge a caveat. The responses were as follows:

	Survey responses				
	Register a lease	Lodge a caveat	Both	Neither lease nor caveat	No view
Tenants	12	4	29	4	21
Park operators	-	-	-	8	-
TOTAL	12 (15%)	4 (5%)	29 (32%)	12 (15%)	21 (27%)

In their written submission tenants and their representatives⁵⁷ were of the view that lease provisions preventing the lodging of a caveat or registration of a lease should be void. Both PHOA and COTA indicated that a ‘subject to claim’ caveat is all that is necessary (this is a caveat which prevents the registration of an interest on the title, except those that are expressed to be subject to the caveator’s claim).

Park operators and their representatives⁵⁸ do not support any changes to the current position and are of the view that operators should be free to contract out of any right a tenant may otherwise have to register a lease or lodge a caveat. Operators raise concerns about the potential restrictions on dealing with their land that might arise and the possible costs involved in removing or otherwise dealing with registered leases or caveats on the title. The costs of removing a large number of caveats could be significant, particularly in parks with hundreds of sites.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Park operators able to contractually limit a tenant’s ability to register a lease or lodge a caveat – preserves the operator’s freedom to deal with their own land. 	<ul style="list-style-type: none"> • Tenants are limited in their ability to protect their own interests by lodging a caveat or registering a lease.
Option B – Prohibit lease clauses that prevent a tenant from registering a lease or lodging a caveat	<ul style="list-style-type: none"> • Tenants have a mechanism available whereby they can greater protect their tenancy rights. 	<ul style="list-style-type: none"> • May restrict the ability of an operator to deal with their own land. • Cost implications for operators in having caveats or leases removed from the title. • Cost implications for tenants in lodging, removing and potentially defending a caveat.

⁵⁷ PHOA, COTA and Goldfields CLC

⁵⁸ CIAWA, Carine Gardens, Aspen Parks, Discovery Parks, Riverside Gardens, NLV, CIAA and Confidential operator

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of status quo.
- Option B – Negative impact. If tenants lodge caveats or register leases this may restrict the park operator's ability to deal with the property. There would be both practical and financial implications in taking action to remove a lease or caveat from the title, and these could be quite significant for a large residential park.

Home owners

- Option A – Negative impact. A home-owner's ability to protect their interests by lodging a caveat or registering a lease may be limited by contract.
- Option B – Positive impact. Will allow home owners to take steps to protect their rights under a lease by lodging a caveat or registering the lease.

Renters:

- Minimal impact. This issue does not impact on renters.

Government:

- Minimal impact on government.

Assessment against the objective

- Option A – Does not operate to allow a tenant to take steps to protect their interests, but preserves the right of a park operator to deal with their land.
- Option B – Preserves the right of a tenant to take steps to protect their interests, but may result in reduced flexibility for park operators in dealing with their land.

As a result of stakeholder feedback to the Statutory Review Report, the C-RIS proposal (Option B) is no longer the recommended option. Option A (status quo) is now the recommended option.

7.4 UNILATERAL VARIATION OF A CONTRACT

Issue

Tenants have expressed concern about park operators unilaterally varying a contract in some instances, particularly in relation to costs payable by a tenant. Some tenants have reported that changes have been made in relation to key elements of their agreements without their consent, for example, significant increases in the exit fees payable or key aspects of park rules.

Objective

To ensure that the parties meet their obligations under the RPLT Act and do not unilaterally vary a contract; noting however the specific exclusion for park rules (given that the rules may be varied by the park operator).

Recommendation

Option A (status quo) – no change to unilateral variation prohibition.

Statutory Review Report

The status quo was the preferred option in the Statutory Review Report. It was proposed that no change would be made to the RPLT Act's prohibition on unilateral variations to a long-stay agreement; however the provisions of the RPLT Act would be reviewed in order to ensure that the prohibition is clear. Community education would also be undertaken to ensure that people are aware that the prohibition exists.

The proposed mechanisms for changing park rules are discussed at part 8 of this paper.

All stakeholder responses to the report were in favour of retaining the status quo.

Background

The RPLT Act requires that a standard clause must be included in all long-stay agreements stating that neither the park operator nor the tenant can vary the agreement unilaterally⁵⁹.

However, another standard clause provides that the park rules (which form part of the long-stay agreement) can be amended from time to time by the park operator. In entering into the long-stay agreement, the tenant agrees to comply with the park rules⁶⁰.

Park rules are discussed separately at part 8 of this paper.

Stakeholder views

The survey and C-RIS asked whether the respondent's long-stay agreements had ever been varied without their agreement. The responses are summarised below:

	Survey responses			Written submissions	
	Yes	No	Unsure	Yes	No
Tenants	27	21	20	2	
Park operators	3	2	2	1	2
TOTAL	30 (40%)	23 (31%)	22 (29%)	3 (60%)	2 (40%)

In their responses to the survey, tenants indicated that their long-stay agreements have been varied in relation to matters such as park rules (including the policy with regards to pets) and exit fees (with these fees either being introduced or increased). While changes to park rules are permitted, it is apparent from the stakeholder feedback that changes to other key provisions in long-stay agreements have been made unilaterally. This indicates that parts of the sector may be unaware of the prohibition.

⁵⁹ RPLT Regulations – Schedules 1 and 2 - clause 35; Schedules 3 and 4 – clause 34

⁶⁰ RPLT Regulations – Schedules 1 and 2 - clause 36; Schedules 3 and 4 – clause 35

The survey and C-RIS asked whether the respondent supported a proposal to clarify provisions concerning unilateral variation of contract. The responses are summarised below⁶¹:

	Survey responses			Written submissions	
	No	Yes	No view	No	Yes
Tenants	6	53	7	-	3
Park operators	4	1	1	5	1
Other	-	-	-	-	1
TOTAL	10 (14%)	54 (75%)	8 (11%)	5 (50%)	5 (50%)

Those respondents who supported further clarification were of the view that it would provide greater certainty and transparency. Tenant respondents appeared to accept that the variation of a long-stay agreement is sometimes necessary, but were of the view that any changes should be made after consultation with tenants. PHOA stated:

‘Variation of a contract should not occur without consultation with tenants. A contract is a legal document between the parties. Any alteration to an existing contract requires both parties to agree... Proposed variations in a contract need to involve transparent and open negotiation between the parties. At least 60 days lead in to any change to a tenant's contract/park rules, together with an up-dated contract provided to the tenant.’

Park operators were of the view that they need the flexibility to respond to changed circumstances in their park. CIAWA⁶² stated:

‘It is a matter of contract law that the terms of the residence agreement cannot be varied other than by agreement of the resident and the owner. No further regulation of this basic legal principal is required. If a resident has a fixed term agreement then the terms cannot be changed during that term. If the resident has only a month to month tenancy then the situation is no different to any other tenancy arrangement where either party can nominate that they want to negotiate a change in the terms, and if no agreement is reached then the agreement will come to an end.’

⁶¹ Although a number of respondents appeared to provide their support for the proposal based on issues surrounding park rules, it is considered that they would likewise support limits on changes to the long-stay agreement

⁶² Supported by Aspen and Carine Gardens

8 PARK RULES

Issue

Whether there is a need for greater regulation concerning park rules, including development and variation of rules, enforcement of rules and consequences for breach.

Objective

To enhance the communal nature of park living by ensuring that park rules are:

- reasonable and relevant;
- complied with by all tenants and the park operator; and
- applied fairly and reasonably.

To ensure that any provisions relating to park rules will enable:

- park operators to amend park rules to adapt to changing circumstances or address emerging problems or issues; and
- tenants to be consulted about any proposed changes to park rules.

Recommendation

Option B – include specific provisions in the RPLT Act about nature, enforcement and amendment of park rules).

Statutory Review Report

Option B was the preferred option in the Statutory Review Report, but with the following amendments:

- all long-stay tenants will be provided with the proposed change to the park rule/s and have the opportunity to object; and
- to limit the opportunities for a vocal minority to dominate decision making, only park rules that have been objected to by a threshold percentage of tenants will need to be subject to further consultation with the PLC and affected tenants; and
- to reduce unnecessary administrative impacts, any park rule changes required due to legal or licence requirements will be excluded from any consultation requirements, for example park rules relating to matters that require urgent attention, such as health and safety, compliance with local government licence requirements, compliance with reasonable head lease contractual requirements, compliance with the RPLT Act or RPLT Regulations or any other written law.

Under this option, park operators would continue to make the final decision about park rules after considering the information provided. However, in setting prohibitions on certain types of rules, it was proposed that:

- the focus of the rules should be confined to regulation of the interaction of residents in the common areas and how the use of their site impacts on other residents; and
- the rules should not extend to key matters specific to the resident's tenancy, including rent, fees and charges, lease term and sale of home. These matters should be addressed in the long-stay agreement itself.

In their responses to the report, stakeholders largely re-confirmed their prior position on this issue, with tenant responses reflecting support for this option⁶³ and park operator responses opposing it⁶⁴.

Background

Park rules set out the rules of conduct specific to each park and feedback to the C-RIS suggests that park rules can significantly impact a long-stay tenant's rights and obligations. However, given the communal nature of park living, park rules are a key factor in the successful operation of a park. Recent studies have indicated that ensuring that residents feel comfortable with park rules is a key to their everyday wellbeing⁶⁵. Rules can influence a person's choice of park, especially in relation to issues such as children or pets. If the rules then change, the implications can sometimes be significant for a resident.

The park rules form part of the agreement between the park operator and the tenant, with a term of the standard agreement providing that the tenant agrees to comply with the park rules, as amended by the park operator from time to time in accordance with the RPLT Regulations⁶⁶. A copy of the park rules must be provided to the tenant with the agreement and other disclosure documents⁶⁷.

Under the RPLT Act, the park operator must ensure that the park rules cover the following matters:

- restrictions on the making of noise;
- parking motor vehicles;
- conduct and supervision of children;
- use and operation of common facilities;
- storage of goods by tenants outside agreed premises;
- the park's office hours;
- cleaning gutters;
- tree maintenance; and

⁶³ Wolff, Cockerham, Engwirda, Shelter WA and PHOA

⁶⁴ Confidential operator, Fourmi Pty Ltd, Discovery Parks, NLV, GG Corp and CIAWA

⁶⁵ Goodman, R., Nelson, A., Dalton, T., Cigdem, M., Gabriel, M. and Jacobs, K. (2013) *The experience of marginal rental housing in Australia*, AHURI Final Report No. 210. Melbourne: Australian Housing and Urban Research Institute – page 88

⁶⁶ RPLT Regulations – schedules 1 and 2 – clause 36; schedules 3 and 4 – clause 37

⁶⁷ RPLT Act – section 11(1)(e)

- emergency procedures⁶⁸.

A park operator may vary, add, remove or replace a park rule by giving 30 days written notice of the amendment to each tenant in the residential park⁶⁹. However, if the proposed amendment affects the use of shared premises in the park, the notice need only be given at least seven days before the change is to take effect⁷⁰. In contrast, neither the park operator nor the tenant can unilaterally vary the other remaining provisions of a long-stay agreement. This issue is examined in part 7.4.

There is currently no requirement for tenants to agree to an amendment to the park rules. However, SAT may make an order to revoke or alter a park rule, or give directions varying the operation of a park rule in relation to a long-stay tenant⁷¹. The SAT also has the broad jurisdiction to deal with any dispute arising in connection with a long-stay agreement⁷², this would include disputes arising in relation to the application of park rules.

Under the RPLT Act the park liaison committee's functions include:

- to advise and consult with the park operator about the preparation of park rules and amendments to the rules; and
- to assist the park operator to ensure that the park rules are observed by park residents⁷³.

However, there is no requirement in the RPLT Act for the park operator to consult with the park liaison committee in relation to changes to park rules. In response to the discussion paper, tenants and their representatives raised concern about:

- the fact that park rules are either not enforced by park operators or are not applied consistently; and
- potential consequences for a breach of the park rules - some tenants have reported that operators apply a 'three strikes' policy and hold minor breaches of rules against a tenant for a number of years.

In some jurisdictions the legislation requires that park rules be reasonable and are enforced consistently and fairly⁷⁴. In some cases an obligation is imposed on the park operators to take reasonable steps to ensure compliance with the rules by tenants⁷⁵ or on tenants to comply with the park rules and take steps to ensure compliance by occupants and visitors⁷⁶.

⁶⁸ RPLT Act – section 95(2)(f); RPLT Regulations- regulation 20

⁶⁹ RPLT Regulations – regulation 20

⁷⁰ RPLT Regulations – regulation 21

⁷¹ RPLT Act – section 62(4)(c)

⁷² RPLT Act – section 62(2)

⁷³ RPLT Act – section 61

⁷⁴ *Residential Tenancies Act 1997* (Vic) – sections 186 and 206ZY; *Residential (Land Lease) Communities Act 2013* NSW – section 86 and 93

⁷⁵ *Residential (Land Lease) Communities Act 2013* (NSW) – section 92; *Residential Tenancies Act 1997* (Vic) – sections 186 and 206ZY

⁷⁶ *Residential (Land Lease) Communities Act 2013* NSW – section 92

C-RIS Proposals:

Option A – Status quo

The RPLT Act does not currently include specific provisions about the application of park rules. The standard provisions require that the tenant comply with the rules, but impose no obligations on the park operator about application or enforcement of the rules. There is no requirement under the RPLT Act for consultation or consent from tenants in relation to amendments to park rules. Any disputes in relation to park rules may be dealt with by the SAT under its broad jurisdiction. The SAT would continue to have the power to revoke or alter a park rule, or give directions modifying its operation in relation to a long-stay tenant.

Option B – Include specific provisions in the RPLT Act about the nature, enforcement and amendment of park rules

Under this option the RPLT Act would be amended to:

- require that park rules be fair and reasonable and clearly expressed;
- require that park operators apply the park rules consistently, reasonably and fairly;
- impose a requirement under the Act on park operators to take reasonable steps to ensure that tenants comply with the park rules;
- require park operators to consult with the park liaison committee (if any) in relation to proposed changes to park rules and to give all tenants an opportunity to comment on proposed changes;
- include specific provisions giving tenants the right to apply to the SAT in relation to an unreasonable park rule; and
- make provision for the prohibition of certain types of rules, for example those that require tenants to undertake significant works for reasons other than health and safety.

Stakeholder views

	Survey responses			Written submissions	
	Option A	Option B	Other	Option A	Option B
Tenants	4	50	-	-	6
Park operators	5	-	1	6	-
TOTAL	9 (15%)	50 (83%)	1 (2%)	6 (50%)	6 (50%)

The survey responses and submissions indicate that changes to park rules can cover diverse matters such as solar equipment on roofs, parking, gardening requirements (such number and type of plants), and pet restrictions.

Tenant advocates generally accepted the need for changes to park rules by park operators, but identified a need for consultation with tenants prior to any changes and written updates about changes to park rules. Tenancy WA noted that the variation of park rules by park operators without consultation was a common issue raised by tenants in its community consultation process.

Tenants and tenant advocates noted that current obligations to advise about changes to park rules were not always undertaken. Park rules were sometimes provided with no notice or inadequate notice to tenants, for example, a tenant is advised verbally by other tenants about a change to the park rules, or a tenant only becomes aware of the change after they query a fee, sell their home or receive a letter advising of a breach⁷⁷.

The Goldfields CLC proposed an 'allowable flexibility' to change park rules should be incorporated under Special Terms in the tenancy agreement providing such aspects are not at odds with the spirit of the Act. PHOA noted the need for improved protection for tenants as they are often elderly and generally have minimal say on changes that occur in the Park. COTA's submission also highlighted the reluctance of tenants on periodic leases to raise concerns given their lack of security of tenure and concerns about without grounds termination. PHOA proposed a 60 day lead-in to any changes to the tenancy agreement or park rules with an updated contract to be provided to the tenant.

All park operator respondents support Option A and were of the view that park operators should have the flexibility to change the park rules when required and address unexpected situations quickly. The CIAWA stated that it encourages its members to cooperate with tenants as best practice and stated:

'Park Rules are not designed to change anything contained in the residence agreement. The Park Rules are to regulate the interaction of residents in the common area and regulate how the use of their site impacts on the adjoining and surrounding park users. CIAWA does not support restrictions being placed on the capacity of park operators to set park rules suitable to their circumstances provided that such rules do not take away any rights that a resident may have under the agreement or the RPLT.'

CIAWA noted that if park management is conducted poorly, systemic problems would lead to a loss of the licence under the CPCG Act.

NLV is of the view that:

'An operator should be free to vary elements of a long-stay agreement to take into account operational requirements and changing circumstances. These include (without limitation) the ability to change park rules, impose new park rules, and vary requirements in relation to the use of facilities.'

In relation to the issue of enforcement, one survey response noted that park operators often do not enforce the rules they make, or choose to enforce them selectively. PHOA stated that the park rules should make very clear the consequences for non-compliance. Riverside Gardens and Mandurah Gardens Estate states the current system works well and they consult tenants about rule changes.

One survey response from a park operator noted the difficulties for mixed-use parks as they are a dual purpose business with park regulations that need to be adjusted as the park management sees fit, often for the safety of all who reside on the park. Another survey response noted park operators must have the ability to incorporate certain rules or procedures to resolve problems as tenants are individuals and problems can arise weekly. Concerns were also expressed that a small clique could control the park liaison committee, and therefore control the rules that apply to their own interest which would put the park operator in a difficult situation.

⁷⁷ PHOA, Tullett

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">• Park operator retains flexibility in relation to park rules, is able to adapt quickly to emerging issues.	<ul style="list-style-type: none">• Tenants vulnerable to variations in park rules, with no consultation or input.
Option B – Include specific provisions about nature, enforcement, and amendment of park rules	<ul style="list-style-type: none">• Will provide greater clarity in relation to the scope, amendment and implementation of park rules.• Will provide tenants with more specific remedies in instances where park rules are unreasonable or applied inappropriately.• Provides mechanisms for consultation with tenants in relation to changes to park rules, may result in rules that are more readily accepted by tenants.	<ul style="list-style-type: none">• Consultation requirements in relation to rule changes will impose a regulatory burden on operators.• May reduce flexibility for operators in responding to emerging issues.• May result in an increase in the number of applications to the SAT and so could have some resource implications.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo. Park operators have flexibility to change park rules without consultation and must simply provide notice.
- Option B – Negative impact. Requires a review of existing park rules to ensure they are fair, reasonable and clearly expressed. Requires the taking of reasonable steps to apply park rules consistently, reasonably and fairly and to ensure that tenants comply with the rules. May result in need for legal action if tenants apply to the SAT in relation to a perceived unreasonable park rule. Consultation requirements will impose a regulatory burden on park operators and are likely to result in increased timeframes.

Home owners and renters:

- Option A – Negative impact. Status quo means that tenants have limited ability to influence development or application of park rules.
- Option B – Positive impact. Tenants given an opportunity to provide input into park rule development process at an early stage. Clear obligation on park operator to apply rules fairly will benefit all tenants. However, park liaison committee representatives will experience an increase in workload.

Government:

- Option A – Minimal impact. Continuation of the status quo.
- Option B – Minimal impact. May result in increased applications to SAT if tenants apply to the SAT to challenge amendments to park rules or the implementation of park rules.

Assessment against the objective

- Option A – Provides the flexibility for park operators to amend park rules to adapt to changing circumstances or address emerging problems or issues. However, it does not ensure park rules are reasonable, relevant, complied with by tenants and park operators and also enforced fairly and reasonably. Nor does it ensure that tenants are consulted about the proposed changes.
- Option B – Provides the flexibility for park operators to amend park rules to adapt to changing circumstances or address emerging problems or issues. It also ensures park rules are reasonable, relevant, complied with by tenants and park operators and also enforced fairly and reasonably. It also ensures tenants are consulted about the proposed changes.

9 DISCLOSURE

It is essential long-stay tenants fully understand the implications of the agreement that they are entering into, particularly the fact that park living may not be a permanent living arrangement.

There is potential for a tenant to suffer significant financial loss if a park operator provides information about the residential park and the lease agreement that is inadequate, incorrect or misleading or if a tenant fails to read or understand the disclosure material and long-stay agreement.

Adequate disclosure is a key factor in ensuring that tenants understand their rights and obligations under a long-stay agreement. A benefit for both park operators and tenants is that greater transparency can reduce potential for disputes to arise at a later stage.

9.1 WHAT INFORMATION SHOULD BE PROVIDED TO A TENANT?

Issue

Disclosure requirements need to ensure that adequate information is provided to tenants prior to entry into the lease. Any gaps in information could result in misunderstanding and disputes. Clear and appropriate disclosure provides benefits to tenants and park operators.

Objective

To address the information asymmetry that exists (because park operators hold the majority of relevant information about a park) by ensuring that prospective long-stay tenants are provided with the necessary information required to make a fully informed decision before entering into a lease.

Recommendation

Option B – amend the RPLT Act to strengthen the RPLT Act and regulations to improve disclosure.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report.

It was proposed to amend the RPLT Act and RPLT Regulations to strengthen and improve disclosure requirements subject to any requirements of privacy legislation. Disclosure documents would be revised and updated to ensure that the key elements of the long-stay agreement are brought to the attention of prospective long-stay tenants before they enter into a long-stay agreement. Current requirements to provide a copy of the agreement, information booklet, schedule of fees and charges, property condition report, park rules and details of the PLC would continue.

The current prescribed Information Sheet would be renamed a 'Disclosure Statement' and expanded to include a clear summary of the key provisions of the lease. Consideration would also be given to developing separate disclosure documents for home owners and renters to avoid confusion.

The report also proposed that the following additional disclosures would be included for site-only agreements subject to any requirements provided by privacy legislation:

- any key representations made during negotiations, that were relevant in a tenant's decision to enter into the long-stay agreement – this will give the tenant an opportunity to detail any representations that they relied on in entering into the long-stay agreement, for example, a promise to provide security services;
- details of proposed future development and improvement of facilities within the park, including proposed timeframes (as known at the time of entering into the agreement);
- details of any material decision in relation to the sale or redevelopment of the land or part of the land that could impact on the tenant's occupation⁷⁸;
- whether any operator is subject to any form of insolvency administration, such as receivership, or a court appointed administrator;
- whether the park operator owns or leases the park⁷⁹ and any relevant information about the owner's lease that could potentially impact on the tenant's occupation;
- whether there is a mortgage over the residential park and whether the mortgagee's consent to the tenant's lease has been or will be obtained;
- date of mortgage – this will be necessary for the recommendations in relation to mortgagee possession (part 10.4) and will include an explanation as to why the date of mortgage is important;
- a statement noting that the park is not a retirement village under the *Retirement Villages Act 1992* and that residents do not receive the protections of that Act;
- exit fee disclosure requirements;
- date of manufacture of the home (where available);
- clear information about rights to compensation; and
- clear information about the tenant's potential liability for relocation costs and an explanation as to obligations at the end of the term, for example, if the tenant is required to move the home or to make good the site.

Most of the additional disclosures listed above would be included in the Disclosure Statement but consideration would be given to placing some information in the tenancy agreement or schedule of fees.

Disclosure documents would be updated and developed in a form that is easy to use (for example web based and downloadable). The content of the Disclosure Statements would be subject to further consultation during the development of the regulations.

Clear disclosure of key terms may assist both parties in enforcing contractual obligations.

⁷⁸ See example disclosures required under the now repealed *Residential Parks Act 1998* (NSW) – section 73

⁷⁹ It is noted that section 15(1) provides for park operators to provide information about a person with superior title at the time of entering the agreement, however this will be expanded to cover other relevant information about the owner's lease

In their responses to the report, park operators generally supported the principle of disclosure, but argued that the disclosure material should be consolidated and that the onus must remain on the prospective tenant to satisfy themselves of the acceptability of the lease conditions⁸⁰. The CIAWA cautioned that, in some cases, additional disclosure could put a more onerous disclosure obligation on park operators than would be imposed on the owner of a normal freehold residence under the Residential Tenancies Act.

Option B remains the preferred option. However, the Department will ensure that the content of the disclosure statement will be the subject of further consultation with stakeholders during the development of amendments to the RPLT Regulations. Further consideration will also be given to rationalising/consolidating the other material that must be provided to prospective tenants (ie. information booklet; schedule of fees and charges; property condition report; park rules; and details of the PLC).

While disclosure of the key terms will assist both parties to enforce their contractual obligations, the onus will remain on the prospective tenant to satisfy themselves of the appropriateness of the park and the terms of the lease agreement.

Background

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 information booklet on park living prepared by the Commissioner (this sets out key information about a person's rights and obligations under the RPLT Act);
- a written schedule of fees and charges currently payable by a long-stay tenant to the park operator;
- a property condition report;
- a copy of the park rules;
- information about the membership and functions of the park liaison committee (if any);
- a copy of the prescribed information sheet (which sets out specific information in relation to the tenant's particular long-stay agreement); and
- particulars of any restrictions or conditions imposed directly or indirectly under a written law that could affect:
 - the sale of the prospective tenant's relocatable home on site; or
 - any proposed assignment of the prospective tenant's rights under the long-stay agreement⁸¹.

⁸⁰ Confidential operator, NLV, GG Corp and CIAWA

⁸¹ RPLT Act – section 11

In addition, when the park operator enters into a long-stay agreement the tenant must be given written notice of:

- the full name and address of the park operator and anyone having superior title to that of the park operator; and
- the terms of the park’s operating licence and all licensing conditions imposed by the relevant local authority under the CPCG Act⁸².

The C-RIS proposed that the RPLT Act and RPLT Regulations should be amended to improve the clarity of the information and provide a summary of the terms of the long-stay agreement. The survey and submission questions focused on whether any additional disclosures should be added to the repackaged information.

C-RIS Proposals:

Option A – Status quo

No changes to disclosure documents and requirements.

Option B – Strengthen RPLT Act and regulations to improve disclosure

Amend the RPLT Act and regulations to strengthen and improve disclosure requirements. Disclosure documents will be revised and updated to ensure that the key elements of the agreement are brought to the attention of the prospective long-stay tenant before they enter into a long-stay agreement. It is proposed that the current prescribed Information Sheet will be renamed a “Disclosure Statement” and expanded to include a clear summary of the key provisions of the lease and some additional disclosures.

Stakeholder views

A table is not included as the survey and C-RIS did not directly ask whether stakeholders supported Option B but rather whether any of the proposed disclosures should be removed and whether any additional disclosures were required.

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

However, it is noted that park operators have options for obtaining information from prospective tenants and that penalties apply to false disclosure by tenants. Park operators may require prospective renters or homeowners to provide reasonable information, such as records of salary statements, referee and employer checks. The RPLT Act provides a penalty of \$5 000 for a long-stay tenant or prospective long-stay tenant if they falsely state their name or place of occupation (section 16(1)). In the event that a tenant cannot pay rent, the park operator may also terminate the tenancy (section 39, RPLT Act). Additional requirements for disclosure by homeowners to prospective purchasers are referred to in part 17.3 and 17.4 of this paper.

⁸² RPLT Act – section 15(1)

CIAWA also considered that tenants should seek independent advice before entering into a long-stay agreement. CIAWA was of the view that the *Privacy Act 1988* may apply to the proposed options listed for disclosure. To address this concern, the recommendations for disclosure will be made subject to any requirements of privacy legislation.

Park operators raised concerns about disclosure of financial information by the tenant to third parties.

Some operators argue that the disclosure requirements are already onerous enough⁸³. NLV is of the view that the present form of disclosure should be simplified and states that:

NLV considers that it is presently too long and complex and most tenants are unlikely to read or understand it. Tenants should be informed of the key commercial points of the agreement. Tenants should be informed of the extent to which any terms represent contracting out of the standard terms. Tenants should be informed that they may be required to leave the leased premises at the end of the tenancy.

Tenants and their representatives⁸⁴ supported increased disclosure as did the Department of Housing and the Consumer Advisory Committee.

Tenant representatives suggested including the following additional information:

- details of applicable legislation⁸⁵;
- information about dispute resolution mechanisms⁸⁶;
- contact details of support organisations⁸⁷;
- information about any known proposals that may affect the continued operation of the park, such as redevelopment or sale⁸⁸; and
- a warning that their asset (the relocatable home) may depreciate over time⁸⁹.

Park operators raised concerns about the inclusion of the following information in a disclosure statement:

- information about a park operator's financial position⁹⁰- as this related to the operator's business arrangements;
- indication of the useful life of a park home⁹¹- as this is a matter to be determined by experts;
- details on proposed future developments⁹² – as these are too difficult to predict; and
- representations⁹³ - as these matters should be included in the contract.

⁸³ Confidential operator

⁸⁴ Shelter WA, WACOSS, Tenancy WA, PHOA, COTA

⁸⁵ PHOA

⁸⁶ PHOA

⁸⁷ PHOA

⁸⁸ Shelter WA, WACOSS, PHOA, Carine Gardens tenants

⁸⁹ Shelter WA, WACOSS, Carine Gardens Tenants

⁹⁰ Riverside Gardens, Confidential operator

⁹¹ Riverside Gardens, Confidential operator, CIAWA, Aspen Parks, Carine Gardens

⁹² Confidential operator, CIAWA, Aspen Parks, Carine Gardens

⁹³ CIAWA, Aspen Parks, Carine Gardens

CIAWA stated that the additional disclosure suggested in the C-RIS ‘in some cases would put a more onerous disclosure obligation on park operators than would be imposed on the owner of a normal freehold residence under the [Residential Tenancies Act]’.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> No changes to existing paperwork and compliance requirements. 	<ul style="list-style-type: none"> Crucial elements of the agreement are not brought to the attention of the prospective tenants in a disclosure statement. Prospective tenants do not receive information about redevelopments or change of use which could impact on home values and the length of their tenancy.
Option B – Increased disclosure obligations	<ul style="list-style-type: none"> Prospective tenants are made aware of key issues relevant to their tenancy in a clearer format. Increased disclosure will reduce the risk of disputes for example, by the inclusion of key representations made during negotiations. Disclosure about any proposals the park operator or owner are aware of that may affect the continued operation of the park, such as redevelopment or sale, will ensure prospective tenants (particularly home-owners) have a better understanding about the security of their lease. 	<ul style="list-style-type: none"> Increased administrative burden and compliance costs imposed on park operators. Risk that a prospective tenant may pass on commercially sensitive information to a third party.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Negative impact. Increased likelihood of disputes about matters not disclosed in the tenancy agreement.
- Option B – Minimal impact. Increased disclosure will reduce the risk of disputes between tenants and park operators. However, there is a risk that prospective tenants may disclose information about proposed redevelopments to third parties which could affect commercial negotiations if the information is not meant to be publicly available.

Home owners:

- Option A – Negative impact. Home-owners not informed about key relevant information relating to their occupation and the value of their asset. No improvements to the clarity of information provided to home-owners. Home-owners do not receive information about proposed redevelopments or change of use of land which could affect the length of their tenancy and the resale value of their park home.
- Option B – Positive impact. Improved disclosure assists home-owners in making an informed decision before entering into a long-stay agreement. Reduces the potential for disputes.

Renters:

- Option A – Negative impact. No improvements to the clarity of information provided to renters.
- Option B – Positive impact. Improved disclosure assists renters in making an informed decision. Reduces the potential for disputes.

Government:

- Option A – Minimal impact. Compliance costs associated with disputes about matters not disclosed in the tenancy agreement are maintained.
- Option B – Positive impact. Potential for reduced disputes and compliance costs.

Assessment against the objective

- Option A – No improvement in clarity or disclosure.
- Option B – Strengthens clarity and provides additional disclosure.

9.2 WHEN SHOULD DISCLOSURE BE REQUIRED?

Issue

The RPLT Act requires that the disclosure documents be provided to a prospective tenant before a park operator makes a long-stay agreement with that person⁹⁴. The C-RIS considered whether minimum timeframes should be specified for providing disclosure material.

Objective

To ensure that tenants are provided with an appropriate timeframe to review and consider the lease and disclosure documents in order to make an informed decision before they sign the long-stay agreement.

Recommendation

Option B – (with amendments) to set a minimum timeframe for disclosure documents and a copy of the long-stay agreement to be given to prospective tenants.

⁹⁴ RPLT Act – section 11

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it would provide a minimum timeframe for home owners to consider disclosure documents and the proposed long-stay agreement.

It was proposed that Option B would only apply to site only agreements. The advance disclosure requirement would not be applicable to renters, as this could impact on the ability of persons to obtain emergency accommodation. However, cooling-off provisions would continue to apply for renters and home-owners.

The suggested timeframe was not less than 10 business days before an agreement is entered into, consistent with the Retirement Villages Act. No waiver of this timeframe would be permitted.

The majority of stakeholder responses to the report (both tenants and park operators) supported the proposal; however a number of respondents advocated for the advanced disclosure period being reduced from the proposed 10 day period⁹⁵ or for the advance notice period to be waived in limited circumstances⁹⁶.

Based on stakeholder feedback and in recognition of the fact that living arrangements in a residential park are different to those in a retirement village, it is proposed to amend Option B by reducing the advanced disclosure period from 10 business days to 5 business days. A further amendment is also proposed to allow for waiver of the advanced disclosure period in the case of tenants with their own registered vehicle, provided they are given the required disclosure documentation prior to their occupancy of the site and confirm in writing that they do not wish to take advantage of the five-day advanced disclosure period.

A five-day advanced disclosure period will ensure that prospective tenants have adequate time to understand the agreement and documents and make an informed decision, without unduly delaying the finalisation of sale agreements.

Background

Some other jurisdictions specify timeframes applicable to the provision of disclosure documents. For example:

- in Victoria, disclosure documents in relation to a site agreement must be provided 20 days before the agreement is signed⁹⁷;
- in New South Wales disclosure documents will be required to be provided 14 days before a contract is signed⁹⁸; and
- the Queensland legislation in relation to manufactured homes provides that if disclosure documents are provided less than seven days before a site agreement is entered into, a cooling-off period of 28 days applies in relation to the agreement⁹⁹.

⁹⁵ Wolff, Shelter WA and PHOA

⁹⁶ NLV

⁹⁷ *Residential Tenancies Act 1997* (Vic) – section 206I

⁹⁸ *Residential (Land Lease) Communities Act 2013* (NSW) – section 21

⁹⁹ *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 33

Other tenancy related legislation in Western Australia also specifies timeframes for disclosure, for example:

- under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* disclosure documents must be provided to a tenant seven days prior to entering into a retail shop lease¹⁰⁰; and
- recent amendments to the *Retirement Villages Act 1992* require disclosure documents to be provided 10 working days before a person enters into a residence contract¹⁰¹.

The RPLT Act provides for a cooling-off period of five working days after the date of the agreement in relation to site-only agreements. During this five day period a tenant may rescind the agreement. The cooling-off period is extended if disclosure documents have not been provided. However, a person is not entitled to rescind the agreement once they have entered into possession of the agreed premises¹⁰². The cooling-off period therefore applies only in limited circumstances.

C-RIS Proposals:

Option A – Status quo

No legislative change. Disclosure documents to be provided before a long-stay agreement is entered into, with no timeframes for providing the documents specified. Cooling-off provisions would continue to apply.

Option B – Minimum time frame

Under this option the RPLT Act would be amended to set a minimum timeframe for disclosure documents and long-stay agreements to be given to prospective tenants, for example, at least five days before the long-stay agreement is entered into.

Stakeholder views

	Survey responses			Written submissions	
	Option A	Option B	No view	Option A	Option B
Tenants	2	57	5	-	6
Park operators	4	1	3	2	3
TOTAL	6 (8%)	58 (81%)	8 (11%)	2 (18%)	9 (82%)

The majority of surveys and submissions preferred a timeframe to be provided for disclosure. CIAWA and Riverside Gardens supported a timeframe with Riverside Gardens noting that it would provide certainty to all parties.

¹⁰⁰ Sections 6 and 6A

¹⁰¹ Section 13

¹⁰² RPLT Act – section 18

NLV did not support the imposition of a timeframe and was of the view that provision of the disclosure documents at any time prior to entry into a lease is sufficient. Another operator¹⁰³ was concerned that a timeframe could result in delays in a tenant moving into a park.

In relation to an appropriate timeframe for disclosure, a number of respondents felt that ten working days was an appropriate timeframe, with some noting that this is consistent with the Retirement Villages Act¹⁰⁴. The only other alternate timeframes provided in the submissions were 14 days¹⁰⁵ and five days¹⁰⁶. This shorter timeframe was preferred by Riverside Gardens as they noted that prior to entering into a long-stay agreement, prospective purchasers often visit the park on numerous occasions and receive a great deal of information throughout this period.

The responses to the surveys suggested a broad range of timeframes, from three business days to 28 days.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Status quo maintained. No change to compliance and administrative requirements. 	<ul style="list-style-type: none"> • There is a risk that a prospective tenant will not have time to fully consider the agreement and other disclosure documents if they are provided immediately before signing. • Increased potential for misunderstanding and disputes.
Option B – Impose a minimum timeframe for provision of disclosure documents	<ul style="list-style-type: none"> • Provides the prospective tenant with time to read and understand the long-stay agreement and accompanying documents and raise any queries with the park operator or seek independent advice. • Reduces the risk for misunderstandings and disputes. 	<ul style="list-style-type: none"> • An additional administrative step is included in the negotiations process, possibly leading to delays in finalisation of agreements.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. No additional administrative steps or change to current practice.
- Option B – Minimal impact. An additional administrative step is included in the negotiations process, possibly leading to delays in finalisation of agreements. However, will clarify information for tenants and therefore reduce the potential for disputes.

¹⁰³ Confidential operator

¹⁰⁴ Goldfields CLC, Confidential tenant A, Tenancy WA, COTA, Department of Housing

¹⁰⁵ PHOA

¹⁰⁶ Riverside Gardens

Home owners:

- Option A – Negative impact. Home owners may not have time to fully consider the agreement and other documents before signing to make informed decisions. Significant financial costs involved.
- Option B – Positive impact. Will ensure that the prospective tenant has adequate time to understand the agreement and documents and make an informed decision. Should reduce the potential for misunderstandings and disputes.

Renters:

- Option A – Negative impact. Renters will not have time to fully consider the agreement and other disclosure documents if they are provided immediately before signing.
- Option B – Minimal impact. Will clarify information for prospective renters and assist them in making an informed decision. However, this option could result in a delay in the renter taking possession of the premises.

Government:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Positive impact. Potential for reduced disputes and compliance costs.

Assessment against the objective

- Option A - Will not provide prospective tenants with an appropriate timeframe to review and consider the lease and disclosure documents in order to make an informed decision before they sign the long-stay agreement.
- Option B - Home-owners would be provided with an appropriate timeframe to consider lease agreements and documents in order to make an informed decision.

9.3 SHOULD ONGOING DISCLOSURE BE REQUIRED?

Issue

In some instances, after a long-stay agreement has been entered into, a park operator may become aware of a change in circumstances that could impact on the park operator's use of the park, the park operator's ability to continue their business and therefore the tenant's occupation of the park. Residential parks can have tenancies of a long duration and significant changes can occur during this time, such as changes to zoning or permitted land use, sale or redevelopment of the land, changes to the conditions imposed on a park operator's licence under the CPCG Act and commencement of action by a mortgagee in relation to the park. Changed circumstances might also arise at the time of a lease renewal.

The C-RIS raised the question about whether the park operator should have an obligation to advise the tenant about issues that arise during a tenancy that could impact the security of the tenancy.

Objective

To provide for greater transparency in relation to long-stay agreements and ensure that tenants are provided with information relevant to their ongoing tenancy.

Recommendation

Option B – amend the RPLT Act to include ongoing disclosure requirements.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it meets the objective of providing greater transparency in relation to long-stay agreements and ensures that tenants are provided with information relevant to their ongoing tenancy.

The report proposed that the RPLT Act be amended to include ongoing disclosure requirements during a long-stay tenancy for site-only agreements. A park operator would be required to disclose in writing to a home-owner any arrangements or restrictions, of which the park operator becomes aware, that could impact on the tenant's occupation of the park, subject to any requirements of privacy legislation.

Examples of matters requiring disclosure could include:

- details of any arrangements entered into for the sale of the land or part of the land that could impact on the tenant's occupation;
- changes to zoning or permitted land use;
- changes to the conditions imposed on a park operator's licence under the CPCG Act; and
- if the operator is currently subject to commencement of action by a mortgagee in relation to the park or any form of insolvency administration, such as receivership or being operated by a court appointed administrator.

Disclosure would be required of changes to the financial position of the park operator where this would impact on the home owner's occupation, but it is recognised that this should not extend to financial negotiations where there is no material impact on the tenant (for example, where a park operator is negotiating with a potential financier or investor).

The majority of stakeholder responses to the report (tenants and park operators) supported this option; however it was clear from the responses that, while park operators do not object to the notion of ongoing disclosure, care must be taken to clearly define what matters would be required to be disclosed. There was strong opposition to any requirement that might mean an operator must disclose their financial details or their day-to-day business with bankers or financiers¹⁰⁷.

The ongoing disclosure requirement will only relate to matters that will have an impact on the tenant's continued occupation in the park, for example, the park operator has signed a sale agreement (as opposed to the operator considering whether to sell the park); the park operator lodging a development application with council (as opposed to the operator considering whether to re-develop the park).

¹⁰⁷ NLV, Fourmi Pty Ltd, CIAWA and Discovery Parks

There will be no requirement for the park operator to provide any information surrounding their normal day-to-day business and financial negotiations/affairs, including with their bankers or other financiers.

Background

Up until 1 November 2015, park operators in New South Wales were required to inform residents of any proposed arrangements or restrictions that were applicable to the park owner's occupation of the residential park or to the resident's or park owner's use of a site in the park of which the park owner become aware during a lease¹⁰⁸. This was to ensure tenants were made aware of any changes that could impact on their occupation of a site in a park. However, the new *Residential (Land Lease) Communities Act 2013* (NSW), which commenced on 1 November 2015, does not contain a provision for ongoing disclosure. This is likely due to the very limited circumstances in which termination of leases will be permitted under the new legislation.

No other jurisdictions have ongoing disclosure requirements.

C-RIS Proposals:

Option A – Status quo

No legislative change. There is no legislative requirement for the park operator to inform a tenant of any changes.

Option B – Amend the RPLT Act to include ongoing disclosure requirements

Under this option the RPLT Act would be amended to include ongoing disclosure requirements. A park operator would be required to disclose to a long-stay tenant any proposed arrangements or restrictions, of which the park operator becomes aware, that could impact on the park operator's use of the park or the tenant's occupation of the park.

Examples of matters requiring disclosure could include, changes to zoning or permitted land use, changes to the conditions imposed on a park operator's licence under the CPCG Act and commencement of action by a mortgagee in relation to the park.

Stakeholder views

	Survey responses			Written submissions	
	Option A	Option B	No view	Option A	Option B
Tenants	1	57	5	-	6
Park operators	5	2	-	5	1
TOTAL	6 (9%)	59 (84%)	5 (7%)	5 (42%)	7 (58%)

¹⁰⁸ *Residential Parks Act 1998* (NSW) – section 74

The majority of operators supported the status quo with no requirement to keep tenants informed about changes to the premises. Park operators raised concerns that ongoing disclosure would be inconsistent with the RTA and park owners' tenure and financial information could be disclosed by tenants to third parties in breach of the Privacy Act¹⁰⁹¹¹⁰. Riverside Gardens considered that ongoing disclosure would provide certainty to tenants and could add value to their homes. One operator noted that disclosure involves an operator speculating about the outcome so disclosure should only be required when an outcome is determined and is a significant matter¹¹¹.

Tenants supported ongoing disclosure. Shelter WA was of the view that any matters which could affect a tenant's ability to continue to occupy a site must be disclosed on an ongoing basis.

The surveys and submissions asked if updated disclosure documents should be provided on a renewal or extension of a lease. The majority of submissions and surveys supported this change (submissions – 3; survey – 87 per cent).

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> Does not place an additional administrative burden on park operators. 	<ul style="list-style-type: none"> Risk that tenants are not made aware of changes that could have a significant impact on their tenancy.
Option B – Amend the RPLT Act to include ongoing disclosure requirements	<ul style="list-style-type: none"> Tenants will be made aware of any changes that could impact on their occupation of a site in a park. Tenants will be in a position to plan accordingly. 	<ul style="list-style-type: none"> Increased administrative burden on park operators.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. No additional administrative burden.
- Option B – Minimal impact. Additional administrative burden in advising tenants of changes that could impact on their occupation of a site in a park.

Home owners

- Option A – Negative impact. Risk that home-owners are not made aware of changes that could have a significant impact on their tenancy.
- Option B – Positive impact. Home-owners are informed about changes that can impact on their occupation of a site and can plan accordingly.

¹⁰⁹ Carine Gardens

¹¹⁰ CIAWA, Carine Gardens

¹¹¹ Confidential submission

Renters:

- Option A – Minimal impact. Risk that renters are not made aware of changes that could have a significant impact on their tenancy.
- Option B – Minimal impact. Obligations will apply to site-only agreements.

Government:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Positive impact. Home owners are required to be informed about changes that could affect their ability to continue to occupy a site so that social housing arrangements and support can be instituted earlier in the process.

Assessment against the objective

- Option A - no improvements to transparency about matters affecting a tenant's occupation.
- Option B - provides improved transparency to matters affecting a tenant's occupation.

9.4 CONSEQUENCES OF INADEQUATE DISCLOSURE

Issue

There is potential for a tenant to be misled and suffer significant financial loss or damage if a park operator fails to provide the relevant disclosure documents or provides information that is incorrect or misleading. The value of the home-owner's investment reduces significantly in the event the asset must be moved or sold with no lease. The home-owner must also find alternative accommodation. The home-owner should be informed about factors relevant to the tenancy and their occupation of the premises.

Objective

Ensure there are appropriate remedies to address those circumstances where disclosure is inadequate.

Recommendation

Option B – (with amendments) to amend the RPLT Act to strengthen the remedies available to address insufficient disclosure.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report.

The report proposed to amend the RPLT Act to strengthen the range of remedies available to address insufficient disclosure, including amendments to:

- provide that certain lease provisions, particularly those that impose obligations or restrictions on tenants, are not enforceable unless clearly disclosed prior to entry into the contract, for example, payment of visitors' fees;

- give the SAT the specific power to vary an agreement if the SAT finds that a tenant has been misled as to the meaning or effect of a term or condition or to make an order rescinding a long-stay agreement if the tenant would not have entered into the long-stay agreement if full disclosure had been made; and
- give the SAT the specific power to order that information included in the disclosure statement prevails over an inconsistent term of the long-stay agreement.

These remedies would provide meaningful resolution to problems arising for tenants as a result of inadequate disclosure. Strengthening the remedies available under the RPLT Act in relation to disclosure will also serve as an incentive to park operators to ensure that complete and accurate disclosure of all relevant information is made.

The majority of stakeholder responses to the report supported this option¹¹²; however a number of park operators opposed the option commenting that a prospective tenant needs to understand the whole of the agreement, not just parts of it, and that the disclosure statement should not take priority over the long-stay agreement itself¹¹³. Another operator commented that if certain lease provisions are unenforceable against certain tenants, or varied in respect of certain tenants, then it could lead to a situation where tenants are treated differently (ie. there is no standardisation)¹¹⁴.

Based on stakeholder feedback to the report, it is proposed to implement Option B with amendments.

As the terms of the long-stay agreement will be set out in the disclosure statement and there will be penalties where a park operator does not properly complete and provide a disclosure statement to a prospective tenant, it is no longer considered necessary to specifically provide that certain lease provisions are not enforceable unless clearly disclosed prior to entry into the contract.

Furthermore, based on both tenant and park operator feedback, SAT will not be provided with the power to vary an agreement if it finds the tenant has been misled or order that information included in the disclosure statement prevails over an inconsistent contract term. Consequently, the remedies available will be limited to damages and/or rescission (cancellation). This is consistent with comments from affected tenants who have expressed a preference to rescind/cancel the contract in cases where they would not have entered into the long-stay agreement had it not been for the false or misleading representation, and also addresses the 'standardisation' concerns of park operators.

Background

Currently, under the RPLT Act and RPLT Regulations the following offences apply in relation to disclosure:

- if a park operator fails to provide the required disclosure documentation before a person enters into a long-stay agreement (maximum penalty of \$5,000)¹¹⁵; and
- if, in the information sheet, a person provides information that the person knows, or ought to know, is false or misleading (maximum penalty of \$5,000)¹¹⁶.

¹¹² Izzard, Wolff, Cockerham, Engwirda, Fourmi Pty Ltd, Shelter WA and PHOA

¹¹³ Confidential operator

¹¹⁴ NLV

¹¹⁵ RPLT Act – section 11

¹¹⁶ RPLT Regulations – regulation 9

A tenant may seek an order from the SAT for the payment of compensation for loss arising from a failure of the park operator to comply with the disclosure requirements¹¹⁷. The SAT also has the power to make any other orders it considers to be appropriate¹¹⁸.

C-RIS Proposals:

Option A – Status quo

Penalties apply for breach of the disclosure requirements.

Option B – RPLT Act be amended to provide that certain lease provisions are not enforceable unless clearly disclosed, and to strengthen the SAT's powers to address insufficient disclosure

It is proposed that the RPLT Act be amended to strengthen the range of remedies available to address insufficient disclosure. Possible options include amendments to:

- provide that certain lease provisions, particularly those that impose obligations or restrictions on tenants, are not enforceable unless clearly disclosed prior to entry into the contract, for example, payment of visitors' fees¹¹⁹;
- give the SAT the specific power to vary an agreement if the SAT finds that a tenant has been misled as to the meaning or effect of a term or condition¹²⁰ or to make an order rescinding a contract if the tenant would not have entered into the agreement if full disclosure had been made; and
- give the SAT the specific power to order that information included in the disclosure statement prevails over an inconsistent contract term¹²¹.

Stakeholder views

A table has not been included as the survey did not ask a question about this issue.

All written submissions from park operators about this issue (6 out of 6 submissions) were of the view that Option A was most appropriate with the SAT already having the capacity to make a broad range of orders. The CIAWA proposed that a cooling off period and provisions for termination of the agreement in the event of non-disclosure would address problems with non-disclosure. One park operator noted the risk of frivolous complaints. All the written submissions from tenants and tenant advocates about this issue supported Option B (3 out of 3 submissions). PHOA was of the view that the current fine of \$5,000 was insufficient. COTA reiterated PHOA's view and proposed an amount of \$50,000.

¹¹⁷ RPLT Act – section 62(4)(e)

¹¹⁸ RPLT Act – section 62(4)(k)

¹¹⁹ See *Commercial Tenancy Act 1985* - section 12(3A) - a lease provision about a tenant's contribution to the costs of the landlord's fixtures and fittings is void unless the disclosure statement contains a statement notifying the tenant of the effect of the provision

¹²⁰ See *Commercial Tenancy Act 1995* – section 26(1a)

¹²¹ See *Retirement Villages Act 1992* – section 13(4)

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">• No additional resources required by park operators to respond to applications to the SAT on the basis of non-disclosure.	<ul style="list-style-type: none">• Tenants make significant financial investments without the full information they need and there is no capacity to remedy non-disclosure or inaccurate disclosure under the RPLT Act.
Option B – Amend RPLT Act to provide that certain lease provisions are not enforceable unless clearly disclosed and to strengthen SAT's powers to address insufficient disclosure	<ul style="list-style-type: none">• Park operators have a strong incentive to clarify the information in their lease agreement with a resulting reduction in disputes for both parties.• Tenants provided with a meaningful resolution to problems arising as a result of inadequate disclosure.• The non-enforceability of certain key lease restrictions would provide tenants with a solution to non-disclosure without the need for an application to the SAT.	<ul style="list-style-type: none">• Additional resources required by park operators to address applications about non-disclosure to the SAT.• Park operators forgo non-disclosed fees.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of status quo.
- Option B – Minimal impact. Additional administrative costs if tenants apply to the SAT. Loss of revenue if fees are not disclosed. However, strong incentives to clarify the terms of the long-stay agreement should result in reduced disputes between tenants and park operators.

Home owners and renters:

- Option A – Negative impact. No substantial remedies are provided to tenants under the RPLT Act in the event of non-disclosure.
- Option B – Positive impact. Tenants provided with a resolution to problems arising from non-disclosure.

Government:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Minimal impact. However, there could be an increase in applications to the SAT to appeal non-disclosure.

Assessment against the objective

- Option A - does not provide remedies for non-disclosure.
- Option B - provides remedies for non-disclosure.

10 FACTORS AFFECTING SECURITY AND DURATION OF TENURE

In general terms, security of tenure describes the statutory protection of a tenant's right to occupy property. Security of tenure is affected by factors such as the landlord's right to terminate a lease and the impact of park owner insolvency.

Achieving security of tenure is a key issue for tenants in residential parks, particularly home owners, given the difficulties sometimes faced in finding another park to relocate to and the costs involved in relocating a dwelling. Submissions from tenants and their representatives indicate that the lack of security of tenure is a major concern, particularly for elderly tenants¹²². A number of home-owners indicated that they had spent a substantial sum on their home with a view to remaining there for a long period.

Many tenants stated that they would have difficulty meeting the costs of relocation¹²³, which could include ensuring that older homes meet current building codes when the home is relocated¹²⁴. Relocation costs can sometimes increase quite significantly where work is required in order to bring a home up to the applicable standards (see part 5.3 for further detail).

Tenure issues are also important to park operators as they can impact on a park operator's capacity to exercise their property rights. Any limitations on a park operator's ability to deal with the land could make residential parks less attractive as an investment opportunity and result in a reduction in the number of residential parks, particularly in relation to mixed-use parks. Conversely, long leases provide certainty for a park operator by providing a reliable income stream.

Some respondents were of the view that given the RPLT Act deals with leasehold rather than freehold interests, the provision of complete security of tenure should not be an objective of the Act¹²⁵. It is for this reason that the concept of certainty of contract is used as a guiding objective for this review (see part 4.2).

10.1 MANDATING MINIMUM LEASE PERIODS

Issue

Many home-owners in residential parks have an expectation that they will live in a park for their lifetime, even though their lease agreement may not actually provide for this. Some believe that this expectation should be reflected by park operators providing fixed term leases of extended duration. Tenant responses to the C-RIS show that this issue is of particular significance to home-owners, given the difficulties and costs that may arise in relocating a dwelling.

This is generally not seen as an issue for tenants in lifestyle villages as tenancies are often for a long duration (between 20 and 60 years). However, this can be an issue for tenants in mixed-use parks or park home parks where park operators may only offer periodic or shorter fixed term tenancies.

The C-RIS noted that mandating minimum lease periods is not considered a viable option without evidence of a clear need for this level of intervention in the market.

¹²² PHOA, Tenancy WA, Izzard

¹²³ Carine Gardens Tenants

¹²⁴ Davey

¹²⁵ CIAA

Other mechanisms, such as increased notice periods and compensation, were therefore considered as options in relation to this issue.

Objective

Recognise tenants' desires for secure lease terms without placing unnecessary restrictions on park operators which could impact on the future viability of the sector.

Recommendation

Option A – (status quo) park operators permitted to offer tenancies of any duration.

Statutory Review Report

Option A (status quo) was the preferred option in the Statutory Review Report, but with a requirement that disclosure documents clearly set out the risks for prospective tenants in entering into a periodic lease or a lease with a short fixed term.

The risk of a reduction in the number of long-stay tenancies or increases in rental that would likely arise if additional compensation requirements were implemented (under Option B) would outweigh the benefits from such a measure.

The majority of stakeholder responses to the report supported this option¹²⁶. Those that opposed the option re-confirmed their prior position by arguing against it on the basis that the legislation should be mandating open ended leases, or at least a mandatory minimum 5 year lease period¹²⁷.

However, as no evidence of a clear need for this level of intervention has been provided, the status quo remains the preferred option.

C-RIS Proposals:

Option A – Status quo

No change. Park operators permitted to offer tenancies of any duration.

Option B – No mandatory minimum fixed term, but strengthen disclosure, notice and compensation provisions for termination of a site-only agreement during a specified initial tenancy period

Under this option, if a site-only agreement were terminated (other than for breach by the tenant) during an initial specified period (for example 5 years) longer notice periods would apply and compensation would be higher. Park operators could still offer shorter term leases, but presumably at an increased cost in order to cover potential increased costs of termination.

¹²⁶ Cockerham, confidential operator, GG Corp, NLV, Fourmi Pty Ltd, Discovery Parks and CIAWA

¹²⁷ Wolff, Engwirda, Ransom and PHOA

Stakeholder views

	Survey responses			Written submissions		
	Option A	Option B	Other	Option A	Option B	Other
Tenants	13	36	7	-	3	7
Park operators	8	-	-	7	-	-
Other				1		
TOTAL	21 (33%)	36 (56%)	7 (11%)	8 (44%)	3 (17%)	7 (39%)

Park operators and their representatives support maintenance of the status quo (Option A)¹²⁸. CIAWA states that Option B is in fact a de-facto imposition of a minimum term as it contemplates the imposition of compensation payments. Park operators raised concerns about their ability to assess suitability of a tenant if mandatory terms are imposed; shorter leases or periodic leases give them the opportunity to make this assessment. Park operators also reiterated concerns about difficulties in offering longer term leases when the licences granted by local government are of a limited duration (currently one year)¹²⁹.

Park operators are of the view that the flexibility of the current model is appropriate¹³⁰ and that they should be free to offer tenancies of durations that they choose¹³¹. Some tenants also appear to value this flexibility and expressed concern that if mandatory terms are introduced they would be locked in to a lease term.

Some operators of mixed-use parks indicated that they would consider not offering long-stay tenancies if Option B were implemented.

CIAWA stated that their preferred position would be to consider differentiated notice periods (i.e. longer notice periods during the first five years of the term), but no compensation.

The Consumer Advisory Committee supported Option A, but stated that disclosure provisions should be sufficiently strengthened so that the tenant is fully aware of the length of the tenancy and what will be required at the end of that period.

The majority of tenants and their representatives support Option B as it provides a greater degree of protection for tenants. A number of these respondents stated that the compensation component of Option B was crucial in providing adequate protection to tenants¹³². Some tenant respondents indicated that they had only been offered periodic tenancies when a fixed term would have been preferable.

¹²⁸ CIAWA, Carine Gardens, Aspen, Discovery, CIAA

¹²⁹ The Department of Local Government and Communities is currently considering whether the licence period should be extended to 5 years. See Consultation Paper for Caravan Parks and Camping Grounds Legislation, 30 May 2014 – page 28

¹³⁰ CIAA

¹³¹ NLV

¹³² COTA, PHOA, Watt

Some tenants and their representatives were of the view that mandatory terms should be introduced¹³³ or that leases should be open ended with no end date (such as in Queensland). However, it is the Government's view that mandating a minimum fixed lease period would not be workable in the residential parks context in Western Australia. Park operators are likely to have difficulties in meeting an obligation to provide a minimum fixed term due to external constraints, such as licensing requirements under the CPCG Act or their own head lease arrangements (in the case of park operators who do not own the land on which a park is situated). In addition, mandating minimum terms may have a significant impact on the ability of park operators to adapt their tenancy mix to suit market needs.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Park operators choose lease terms that suit their own lease or licensing requirements without risk of inconsistency between these and their lease arrangements with tenants. • Continued flexibility for parties to negotiate an agreed term suitable to their circumstances. 	<ul style="list-style-type: none"> • Those home-owners who want a fixed term lease may continue to only be offered periodic leases. • Less certainty for tenants.
Option B - No mandatory minimum fixed term, but strengthen disclosure, notice and compensation provisions for termination during a specified initial tenancy period	<ul style="list-style-type: none"> • May increase the prospect of park operators offering fixed term leases or leases of a longer duration. • Maintains the flexibility for park operators to continue to offer leases of a shorter duration (with compensation). • Provides more certainty to tenants. • Provides park operators with ability to have greater certainty with income and tenant occupation. 	<ul style="list-style-type: none"> • Could make parks a less attractive investment option by limiting flexibility and exposing park operators to the risk of paying compensation. • May act as a disincentive for mixed-use parks to offer any long-stay tenancies (i.e. parks might only offer holiday stays). • May result in increased rents in order to allow park operators to cover potential compensation costs. • Increased complexity if different requirements apply depending on the lease term.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of status quo. Park operators retain flexibility to offer tenancies of any duration.

¹³³ Carine Gardens Residents

- Option B – Negative impact. Increased regulatory burden on park operators. Park operators can still offer shorter term leases, but at a potentially increased cost, if compensation is payable. Will have limited impact on operators of lifestyle villages, as they already offer leases with long fixed terms. Will impact more significantly on operators of mixed-use parks and park home parks who currently offer shorter fixed terms or periodic leases. May make it less attractive for park operators of mixed-use parks to offer long-stay leases.

Home owners and renters:

- Option A – Negative impact. Home owners continue to be vulnerable to termination of shorter term leases with no right to compensation. Tenants to bear the costs of relocation.
- Option B – Positive impact. Tenants provided with improved safeguards (such as compensation, longer notice periods) in lieu of security of tenure. However, the decision as to whether to offer a longer term tenancy would still rest with the park operator which may result in fewer long-stay leases being available in mixed-use parks and increased rental costs.

Government:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Negative impact. If fewer long-stay tenancies are being made available, those who are unable to secure housing may seek government housing assistance and add to existing pressures on these services.

Assessment against the objective

- Option A – does not deliver security of tenure for tenants, but will allow park operators to retain flexibility in relation to the duration of tenancies that they offer. Tenants will continue to bear any costs or risks associated with relocation.
- Option B – acknowledges that security of tenure is unachievable when dealing with leasehold interests; however it does provide some improved safeguards for tenants regarding their occupation. This could, however limit flexibility for park operators to a degree. Some of the costs and risks associated with relocation may shift to the park operator and could result in fewer long-stay leases being offered by park operators.

10.2 TERMINATION OF TENANCY WITHOUT GROUNDS

Issue

Whether without grounds termination of periodic tenancies should be retained.

Objective

To prevent misuse of without grounds termination notices, but allow park operators flexibility to manage their park to respond to changes in the market by permitting termination in appropriate circumstances.

Recommendation

Option C – (with amendments) to remove without grounds termination but include additional specific provisions under which parties can terminate a periodic tenancy. The option would not apply to renters.

Statutory Review Report

Option C was the preferred option in the Statutory Review Report as it provides a reasonable balance between the interests of both park operators and tenants and provides clarity around the circumstances in which a periodic tenancy may be terminated. Option C is consistent with the approach currently applied by the SAT in relation to termination of tenancies, and with some other jurisdictions.

In order to reduce the regulatory burden on mixed-use parks with renters, it was proposed that Option C would not extend to renters. This would ensure consistency with the Residential Tenancies Act and provide operators with greater flexibility to manage their park. The impact of terminating a lease without grounds is not expected to be as high on renters as it would be for home-owners as relocation costs are significantly less for renters.

It was noted that care would need to be taken in framing the termination grounds, as they will need to be broad enough to give park operators sufficient flexibility, but not so broad as to be open to abuse. For example, one possible ground for termination would include where a park is to be closed, sold or redeveloped. Evidence justifying a termination may be required in relation to some grounds.

In addition to those grounds set out in Option C above, the report proposed that park operators also be permitted to make an application to the SAT for termination of a long-stay agreement on the ground that the tenant has repeatedly interfered with the quiet enjoyment of the residential park by the park's residents. This would be in addition to the current ability to terminate for damage to property and violent behaviour.

It was noted that section 73 of the RPLT Act currently provides that a park operator may seek and order from the SAT terminating the long-stay agreement on the ground that the park operator would suffer undue hardship if required to terminate the agreement under any other provision of the Act. The report proposed that this provision be retained and expanded so that the tenant may also make an application for termination on the grounds of hardship.

While a majority of stakeholder responses to the report supported this option¹³⁴, a number of respondents were opposed¹³⁵.

One park operator expressed concern at the potential limiting effect of specifying the grounds for termination of periodic leases. The operator argued that it is not possible to formulate every scenario where termination may be reasonably warranted, and therefore the broader power which exists currently is preferred. It was noted that the current power to terminate cannot be used capriciously or arbitrarily as the SAT's decisions demonstrate¹³⁶. In supporting 'without grounds'

¹³⁴ Wolff, Cockerham, Engwirda, Flegeltaub, NLV (but support restricted to lifestyle villages only), Shelter WA and PHOA

¹³⁵ Izzard, GG Corp and confidential operator

¹³⁶ Confidential operator

termination, the Housing Authority argued that it ensures that a legally valid reason for termination is not inadvertently excluded from the RPLT Act.

Based on stakeholder feedback to the report, it is proposed to amend Option C by developing and including a broader “business” reasons ground for inclusion in the list of specific grounds for termination of periodic leases (eg. where the breakdown in the relationship between the tenant and park operator, or tenant and other tenants is so serious and so significant that it impacts on the operation of the park). This will provide operators with greater flexibility to reasonably terminate a periodic agreement. Disputes regarding termination will continue to be subject to SAT review.

It is also proposed to clarify the operation of the RPLT Act by confirming that the expiration of a fixed-term agreement does not automatically create a periodic agreement where the tenant remains in occupation.

Background

Consistent with the RPLT Act, all other jurisdictions do not permit a fixed term agreement to be terminated without grounds prior to the end of the term. However, in New South Wales and Queensland, without grounds termination is not permitted in relation to any agreements with home owners¹³⁷, including periodic agreements. In these jurisdictions a range of specific grounds for termination are included in the legislation.

In Victoria, South Australia and the Northern Territory the legislation does permit without grounds termination of periodic agreements. In Victoria, the operator of a Part 4A Park must give 365 days’ notice of termination¹³⁸ to a home owner.

The RPLT Act includes a number of specific grounds for termination of the long-stay agreement. Examples include non-payment of rent, using the premises for an illegal purpose, damage to property and violent behaviour, and a breach of a term of the long-stay agreement. In addition, the RPLT Act also provides that either party to a long-stay agreement may give a notice of termination to the other to terminate a periodic long-stay agreement without grounds.

The notice of termination by the tenant must be given at least 21 days before they vacate. Tenants on fixed term agreements cannot end the agreement before the end of the term. The notice of termination by a park operator must not require vacant possession before 60 days have passed for renters or 180 days for home owners. If the agreement is for a fixed term, the notice cannot require possession before the end of the fixed term.

Some safeguards do exist for tenants in relation to termination without grounds. Recent decisions of the SAT require that a notice of termination without grounds must nevertheless be justified¹³⁹ and that park operators cannot terminate on a mere whim. The SAT did not define what would constitute justification in all circumstances. However, in the matters considered by the SAT redevelopment of a residential park was accepted as reasonable grounds for termination¹⁴⁰.

¹³⁷ *Residential (Land Lease) Communities Act 2013* (NSW) and *Manufactured Homes (Residential Parks) Act 2003* (Qld)

¹³⁸ *Residential Tenancies Act 1997* (Vic) – section 317G

¹³⁹ Under section 68(4)(b) of the RPLT Act

¹⁴⁰ *Howe and Kelmscott Caravan Park* [2010] WASAT 148; *Cain and APC Parks Pty Ltd* [2011] WASAT 151

The SAT will also consider whether a park operator was wholly or partly motivated in giving a notice of termination by the fact that a tenant has complained to a public authority about the park operator's conduct or taken steps to secure his or her rights under the long-stay agreement and may refuse to make an order for vacant possession if satisfied this is the case¹⁴¹.

C-RIS Proposals:

Option A – Status quo

This option would provide operators with continued flexibility to manage their park as they see fit. Tenants, particularly those on periodic leases, would still be subject to having their tenancies terminated without grounds.

Option B – Remove without grounds termination for park operators

Under this option the provision enabling a park operator to terminate a tenancy without grounds would be removed for all tenancy types, including periodic tenancies.

This option would retain the ability for home owners on periodic agreements to terminate without having to specify a ground; however it may be desirable to increase the notice period from the current 21 days.

Option C – Remove the ability to terminate without grounds for park operators, but include additional specific provisions under which the parties can terminate a periodic tenancy

This option seeks to provide operators with continued flexibility to manage their park as required, while ensuring that termination cannot be done capriciously or arbitrarily.

Possible additional grounds could include:

- the park is to be closed or is to be used for a different purpose, this could include the situation where the operator's lease of the park has not been renewed or the licence under the CPCG Act has not been re-issued;
- the park requires repairs or upgrading in order to comply with statutory obligations;
- the park is to be appropriated or acquired by an authority by compulsory process;
- application by the operator for termination for serious misconduct by a home owner - an application would be made to the SAT for a termination order;
- home owner's refusal to relocate – in cases of relocation at the operator's request (where the operator is to pay all reasonable costs to relocate to another reasonably comparable site or another community close by which the operator runs) and a new agreement is to be entered into on same or substantially similar terms; or
- non-use of the site by the tenant for an extended period.

This option could also retain the ability for home owners on periodic agreements to terminate without having to specify a ground; however it may be desirable to increase the notice period from the current 21 days.

¹⁴¹ RPLT Act – section 68(5)

Stakeholder views

	Survey responses				Written submissions		
	Option A	Option B	Option C	Other	Option A	Option B	Option C
Tenants	11	13	29	5	-	2	7
Park operators	7	-	-	-	7	-	-
Other	-	-	-	-	1	-	-
TOTAL	18 (28%)	13 (20%)	29 (44%)	5 (8%)	8 (47%)	2 (12%)	7 (41%)

This issue does not generally impact on operators of lifestyle villages, who do not offer periodic leases, but is likely to impact on operators of park home parks and mixed-use parks. Park operators and their representatives support the maintenance of the status quo.

CIAWA stated that any reduction in flexibility for termination would substantially fetter the park owner's right to determine the best use of their property. Owners of mixed-use parks indicated that to further limit the right of a park operator to terminate would significantly impact on the decision to offer long term sites, with the number of long term sites likely to reduce.¹⁴² NLV stated that removal of the without grounds termination would effectively mean that periodic leases are no longer periodic, with the likely result being that park operators would no longer offer periodic leases, but short fixed term agreements.

One operator was of the view that no change was required because a tenant currently has a right to challenge a notice to terminate without grounds in the SAT¹⁴³. The Consumer Advisory Committee also supported Option A and noted that under section 68 of the RPLT Act, the SAT currently must still be satisfied that terminating the agreement is justified. The Consumer Advisory Committee also states that the 'right to terminate without grounds reflects the nature of property ownership. There should be no legislative amendment with the effect of fettering property ownership rights'.

The majority of tenants and their representatives support Option C, with a small number supporting Option B.

Responses from some tenants¹⁴⁴ and Shelter WA indicate that some park operators may be using the threat of without grounds termination to silence complaints from tenants. Concerns were also raised that the power to terminate without grounds may be used in an unreasonable or capricious manner¹⁴⁵.

¹⁴² Confidential operator, survey response

¹⁴³ Confidential operator

¹⁴⁴ Webb

¹⁴⁵ Tenancy WA, Goldfields CLC

The C-RIS asked whether any other grounds for termination should be included under Option C. Respondents suggested that consideration should be given to permitting termination on the following additional grounds:

- a tenant has been convicted of a criminal offence or is engaging in illegal activities on the park; and
- where the park becomes uninhabitable due to natural disaster¹⁴⁶.

The C-RIS also asked whether any of the proposed grounds for termination suggested for Option C should not be included. Some concerns were raised in relation to the grounds of non-use of the site by a tenant. Tenant representatives also stressed the importance of park operators being required to provide proof in relation to a termination ground and for the SAT to retain jurisdiction to determine disputes about termination¹⁴⁷.

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Flexibility retained for both parties to terminate the lease. • Park operators can continue to comply with their own lease arrangements and/or annual licensing requirements without concerns about conflict with lease arrangements with tenants. • SAT will consider whether grounds for termination justified in the circumstances, determined on a case by case basis. 	<ul style="list-style-type: none"> • Home owners on periodic leases have less certainty regarding the length of their occupation. • Home owners on periodic leases may experience difficulties relocating. • Home owners required to make an application to the SAT on the basis that a termination is not justified. May result in a greater number of applications to the SAT, as grounds for termination are not clearly specified.
Option B – Remove without grounds termination	<ul style="list-style-type: none"> • Will provide greater certainty as to the length of occupation to home owners on periodic agreements. • May result in fixed term tenancies being offered to those home owners who were only offered periodic tenancies previously. • Operators have more certainty as to the length of stay of home owners. 	<ul style="list-style-type: none"> • Limits flexibility to terminate for those home owners with moveable dwellings. • Operators may find it difficult to comply with their own lease arrangements and/or licence conditions. • Operators may find it more difficult to make changes due to business reasons (i.e. altering ratio of tourists and long-stay tenants in mixed-use parks). • Operators may cease offering periodic leases or long-stay agreements generally.

¹⁴⁶ Section 45 of the RPLT Act currently provides that an agreement may be terminated if it is frustrated because the premises have become uninhabitable or unusable for the intended purpose otherwise than as a result of a breach of the long-stay agreement

¹⁴⁷ PHOA, Tenancy WA

	Potential benefits	Potential disadvantages
Option C - Remove without grounds termination, but include additional grounds upon which the tenancy can be terminated	<ul style="list-style-type: none"> • Retains flexibility for park operators for specified purposes. • Reduces possibility that power of termination could be used capriciously or arbitrarily. • Will provide greater certainty as to the length of occupation to home owners on periodic agreements. • Provides greater clarity in relation to those circumstances in which termination is permitted, may result in fewer applications to the SAT. 	<ul style="list-style-type: none"> • Without a 'business reasons' ground, the listed matters may still not provide enough flexibility to operators. • Operators may cease offering periodic leases or long-stay agreements generally. • May limit the grounds on which a termination can be challenged – compared to the broad justification test currently applied by the SAT.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Park operators can terminate tenancies without grounds, with termination subject to challenge in the SAT on the basis that it is not justified.
- Option B – Negative impact. Limits flexibility of park operators to a significant degree. Operators may not be able to respond to unforeseen events or changes in business circumstances.
- Option C – Negative impact. Park operators provided with more flexibility than Option B, but may find it still too restrictive if the option does not include a business reasons ground. Park operators may not be able to respond to unforeseen events which impact on their future operations.

Home owners and renters:

- Option A – Negative impact. A tenancy may be terminated without grounds and a tenant is able to challenge such a termination in the SAT on the basis that the termination is not justified in the circumstances. Will be assessed on a case by case basis. Costs will be incurred in undertaking action in the SAT.
- Option B – Positive impact. Improves certainty for tenants. May limit flexibility to a degree (for those tenants who want flexibility to leave the park when they wish and on short notice). May result in fewer long-stay tenancies being available in mixed-use parks.
- Option C – Positive impact. Provides more certainty for tenants, although not to the extent in Option B. May result in fewer long-stay tenancies being available in mixed-use parks. Provides greater transparency about the permitted grounds for termination of a tenancy agreement which makes it easier for a tenant to challenge an unlawful termination where appropriate.

Government:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Negative impact. If fewer long-stay tenancies are being made available in mixed-use parks, those who are unable to secure housing may seek government housing assistance.
- Option C – Minimal impact. If fewer long-stay tenancies are being made available in mixed-use parks, those who are unable to secure housing may seek government housing assistance. However, greater clarity around the permitted grounds for termination may result in a decrease in the number of applications to the SAT.

Assessment against the objective

- Option A – Affords park operators the greatest degree of flexibility. Termination of periodic tenancies permitted, subject to the requirement that the termination must be justified in the circumstances. Does not improve certainty for tenants.
- Option B – Affords the greatest improvement in certainty of occupation for tenants, but significantly limits flexibility for park operators.
- Option C – Improves the certainty of occupation for tenants by limiting the circumstances in which a tenancy can be terminated to a specified set of reasonable grounds. Provides some flexibility for park operators by specifying a range of grounds upon which termination is permitted.

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

Issue

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

Objective

To reinforce a tenant's right for certainty of lease term, while not impacting on the marketability and/or desirability of residential park investment.

Recommendation

Option B – (with amendments) to prohibit termination of a fixed term agreement on sale of the park with vacant possession.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it is consistent with the approach taken in most other jurisdictions, and in relation to residential tenancies in Western Australia. Option B recognises the nature of a fixed term arrangement. Park operators would be free to offer shorter term leases if flexibility is necessary to accommodate any future plans for the park. Tenants would be in a position to choose the tenancy that suits their specific needs.

The report acknowledged that park operators may only offer periodic or short fixed term tenancies so that they may retain flexibility, however, tenants would be in a position to make a clear choice about the risks they wish to accept – for example, a long fixed term lease at a higher cost versus a shorter term or periodic lease at a lower cost. However, it was noted that on the sale of a park, it will always be possible for the purchaser to reach an agreement with home-owners in relation to the future of the park (i.e. the new park owner may buy out the remainder of the lease term from the home-owner).

The report proposed that this requirement would only apply to leases entered into or extended after the commencement of the changes to the RPLT Act.

The majority of stakeholder responses to the report did not support Option B¹⁴⁸, although for different reasons. Generally, stakeholders re-confirmed their prior position on this issue. Tenant responses favoured the extension of compensation to those on periodic leases, whilst park operators and CIAWA argued that termination on sale with vacant possession should be permitted. In opposing Option B, Shelter WA argued that the proposed change may cause operators to cease to offer fixed-term tenancies in favour of periodic tenancies.

While the position of stakeholders is acknowledged, it is not proposed to change this recommendation significantly. It is noted that Option B would only apply to leases entered into or extended after the commencement of any changes to the RPLT Act.

However, it is proposed to amend Option B by including a further provision to permit a tenant to elect to receive compensation and vacate the park provided they are agreeable with the terms proposed by the park operator. This will preserve the rights of the fixed-term tenant to remain in occupation until the end of their fixed-term agreement, but provide flexibility for the parties to agree to the terms of an earlier departure if the tenant is agreeable to this occurring.

Background

The RPLT Act provides that a park operator may give a notice of termination to a long-stay tenant on the ground that the park operator has entered into a contract for the sale of park premises and is required under the contract to give vacant possession¹⁴⁹.

Tenants on both fixed term and periodic tenancy agreements may have their agreements terminated if the park is sold subject to vacant possession, even if the lease agreement provides for a long lease term. The RPLT Act provides that the minimum notice periods are 60 days for renters and 180 days for home owners¹⁵⁰.

Compensation is payable for termination of a fixed term lease before the end of the term¹⁵¹.

¹⁴⁸ Wolff, Engwirda, Shelter WA, PHOA, Fourmi Pty Ltd and CIAWA

¹⁴⁹ RPLT Act – section 41(1)

¹⁵⁰ RPLT Act – section 41(3)

¹⁵¹ RPLT Act – section 46

C-RIS Proposals:

Option A – Status quo

Park operators permitted to terminate both fixed term and periodic tenancies on the sale of a park (where vacant possession is required). Compensation is payable on termination of fixed term tenancies.

Option B – Amend the RPLT Act to provide that a park operator is no longer permitted to terminate a fixed term agreement on the sale of a park.

Park operators would continue to have the right to terminate periodic tenancies on the grounds that a park is to be sold with vacant possession.

The notice periods for termination of periodic tenancies could continue to be 60 days for renters and 180 days for home owners.

Stakeholder views

The C-RIS proposed that the RPLT Act be amended in line with Option B and sought feedback in relation to the potential cost implications of implementing this proposal.

The following written responses were received, although a specific question was not asked about whether the proposal was supported.

	Written responses ¹⁵²	
	Option A	Option B
Tenants	3	4
Park operators	6	-
Other	1	-
TOTAL	10 (71%)	4 (29%)

Those tenants and their representatives who supported the proposal set out in Option B were of the view that tenancies should continue regardless of a change in ownership. Home owners with long fixed term leases were particularly concerned about the possibility that their leases might be terminated, given that they have invested significant funds in purchasing their homes with an expectation of their tenancy agreement being enforceable for the full duration of its term.

Shelter WA, Tenancy WA and WACOSS expressed concern that any limitations imposed on a park operator's right to terminate tenancies (including fixed term agreements) on the sale of a park might make parks less attractive as an investment option, thus reducing the number of parks or result in park operators offering only periodic leases instead of fixed term leases. These organisations therefore supported Option A, provided that adequate compensation was payable on termination and sufficient notice provided.

¹⁵² A survey question was not included in relation to this specific issue

Park operators supported maintenance of the status quo and expressed concern that any changes might limit flexibility with regards to the use of the residential park land, thus reducing its market value. Given that 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. Some operators indicated that fixed term leases might not be offered if changes are made.

The Australian Property Institute (Inc.) WA Division (API) supports retention of the park operator's right to terminate leases on the sale of a park. API states that, as a number of caravan parks have strong underlying land values, a caravan park operation may not necessarily represent the site's highest and best use. A detrimental lease could potentially negatively impact on a park's overall market value.

Some park operators and their representatives¹⁵³ suggested that the right to terminate a fixed term lease should be retained, but that the notice period could be extended to 365 days in order to provide more time for tenants to relocate.

The C-RIS and survey asked whether the current notice periods for termination of a periodic tenancy on sale of a park were sufficient. The responses are summarised below:

	Survey responses		Written submissions	
	Notice period appropriate	Notice period should change	Notice period appropriate	Notice period should change
Tenants	28	18	1	-
Park operators	3	-	1	-
TOTAL	34 (65%)	18 (35%)	2 (100%)	-

A number of survey respondents suggested that 365 days was an appropriate notice period for home owners with periodic agreements.

The C-RIS and survey also asked whether Option B should apply to all parks or just lifestyle villages. The responses are summarised below:

	Survey responses		Written submissions	
	All parks	Lifestyle villages	All parks	Lifestyle villages
Tenants	42	10	1	=
Park operators	5	1	-	1
TOTAL	47 (81%)	11 (19%)	1 (50%)	1 (50%)

¹⁵³ CIAWA, Carine Gardens, Aspen, Discovery

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> Operators have continued flexibility to adapt to market conditions, including selling the park. Parks viewed as an attractive investment option due to flexibility regarding sale. 	<ul style="list-style-type: none"> Home owners faced with an uncertain future regarding their ongoing occupation in the park if it is sold. Home owners may experience difficulties in relocating, despite compensation payable.
Option B – Remove ability for operator to terminate leases when park is sold	<ul style="list-style-type: none"> Provides tenants with greater certainty, as their right of occupation would not be overridden by changes in park ownership. Ensures the continued operation of the residential park following sale. The new park owner has certainty with regards to tenancy arrangements. Certainty of long-term leases should attract higher occupancy which may offset any potential impact on land value that results from reduced flexibility in land use. 	<ul style="list-style-type: none"> Will prevent park operators from selling with vacant possession which may make parks (especially mixed-use parks) less attractive as an investment option, could trigger park closures. Operators may cease to offer fixed term tenancies or reduce term of tenancies so that they are not locked in. The costs (e.g. rent and the purchase price for a home) to enter a park may be increased to compensate for the reduced flexibility on sale of the park.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo.
- Option B – Negative impact. Limits flexibility of park operators to a significant degree. Market value of premises may decrease if the use of the land cannot be changed (particularly for mixed-use parks). May make it difficult for operators to realise their investment if buying a residential park becomes less attractive to purchasers. Park operators may choose to offer only periodic or shorter term leases in order to retain flexibility. It should be noted that large operators, such as NLV, already agree not to sell with vacant possession and include this in their long-stay agreements.

Home owners and renters:

- Option A – Negative impact. Tenants faced with uncertain future regarding their ongoing occupation in the park if it sold.
- Option B – Positive impact. This would provide tenants on fixed term tenancies with greater certainty, as their right to occupation will not be overridden by changes in park ownership.

However, tenants could be faced with greater upfront and ongoing costs to enter a park, reduced choice as to tenancy options, and less choice of parks generally. Tenants will have greater certainty as to their tenancy arrangements, even if tenancies offered are shorter.

Government:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Minimal impact. If residential parks offer reduced tenancy options or become a less attractive investment option, tenants affected by the changes may be forced to seek government housing assistance and add to existing pressures on these services.

Assessment against the objective

- Option A – Affords park operators the greatest degree of flexibility. Termination of all tenancies permitted on the sale of a park (with vacant possession), subject to the obligation to pay compensation and provide notice. Tenants remain vulnerable to having their tenancies terminated. Compensation and notice may not be considered adequate safeguards, given the difficulties faced by tenants in relocating their homes.
- Option B – Affords the greatest certainty for tenants, but significantly limits flexibility for park operators and potential purchasers of parks. While it is not expected that this Option will have a significant impact on the business practices of lifestyle villages, it is acknowledged that it may impact on the market value of residential parks, particularly mixed-use parks, as it could reduce their attractiveness as an investment option (as new owner must honour existing leases). However, it is anticipated that the impact would only be short term as mixed-use parks currently tend to offer shorter fixed term leases i.e. less than five years. Furthermore, external factors, such as land zoning, would also impact on the park operator's ability to change the use of the park.

10.4 IMPACT OF PARK OWNER INSOLVENCY – MORTGAGEE POSSESSION

Issue

Whether long-stay agreements under the RPLT Act should terminate when a mortgagee enters into possession.

Objective

To reinforce a tenant's right for certainty of lease term, while recognising a mortgagee's right to deal with the secured property.

Recommendation

Option B – that leases not automatically terminate upon mortgagee taking possession.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it provides a greater degree of protection for tenants. Mortgagees would still be able to deal with the residential park land, but not at the expense of tenants. It would always be possible for the mortgagee to reach an agreement with home-owners in relation to the future of the park (i.e. the mortgagee may buy out the remainder of the lease term from the home-owner). Option B is consistent with the Retirement Villages Act.

Similar to the Retirement Villages Act, the changes would apply only to mortgages entered into after commencement of the proposed provisions. The report also proposed that details of a park operator's financial arrangements be included in the disclosure statement, including date of mortgage, so that prospective tenants can assess potential risk.

The majority of stakeholder responses to the report supported Option B¹⁵⁴. Three respondents did not support the option, arguing that it could have a detrimental effect on a park operator's ability to obtain finance¹⁵⁵.

Option B is recommended as it provides a greater degree of protection for tenants. However, it is acknowledged that the provision may be of limited effect where the park operator is liquidated under Commonwealth law (ie. Corporations Act) and the liquidator appointed by the mortgagee successfully disclaims the lease.

Background

The RPLT Act currently provides that a long-stay agreement ends when a mortgagee takes possession of the premises under the mortgage¹⁵⁶. Compensation is not payable under the RPLT Act for termination of an agreement as a result of a mortgagee entering into possession¹⁵⁷.

However, the RPLT Act prohibits entry for the purpose of recovering possession of the premises from the long-stay tenant except in accordance with an order of the SAT¹⁵⁸. The SAT must not make an order for recovery of possession of the premises by a mortgagee, such as a bank, unless satisfied that the long-stay tenants currently in possession have had reasonable notice of the application¹⁵⁹.

The RPLT Act also provides for a tenant who is or was in possession of premises to apply to the SAT to seek an order vesting a tenancy of the premises with that person, which would require the person with superior title (such as the mortgagee) to take on the lease¹⁶⁰.

Balanced against the need to protect the interests of tenants, is the recognition that mortgagees require some degree of flexibility in dealing with mortgaged property.

¹⁵⁴ Izzard, Wolff, Cockerham, Engwirda, Hunt, GG Corp, confidential operator, Shelter WA and PHOA

¹⁵⁵ Fourmi Pty Ltd, Discovery Parks and CIAWA

¹⁵⁶ Section 33(3)(c)

¹⁵⁷ Section 46 – provides that a tenant under a fixed term agreement is entitled to payment of compensation for loss incurred as result of termination if vacant possession required on sale of the park, without grounds, if agreement frustrated and on grounds of hardship to park operator

¹⁵⁸ Section 54

¹⁵⁹ Section 70(1)

¹⁶⁰ Section 70(2)

The Residential Tenancies Act has recently been amended to require a mortgagee to give a tenant 30 days' notice prior to commencement of proceedings for recovery of possession of premises¹⁶¹ and at least 30 days' notice to vacate the premises before taking possession of the property¹⁶².

The *Retirement Villages Act 1992* (WA) provides that a contract binds successors in title (including mortgagees) and cannot be terminated by a mortgagee who becomes entitled to vacant possession unless the mortgage was entered into before the commencement of the Act¹⁶³.

Mortgagee possession in relation to residential parks is dealt with in varying ways across the other jurisdictions. In some instances home owners are treated in a different manner to renters.

The South Australian Act provides that a tenancy agreement terminates if a mortgagee takes possession¹⁶⁴.

The Victorian legislation provides that a mortgagee may give notice to vacate a site if the mortgagee becomes entitled to possession or to exercise a power of sale in respect of the park. Varying notice periods apply, depending on the nature of the tenancy.

For tenants in a caravan park who either own a caravan and rent a site or rent both a caravan/mobile home and the site the notice period is as follows:

- if mortgage given before the resident obtained residency right - 90 days; and
- if mortgage given after the resident obtained residency right - 6 months.¹⁶⁵

For home owners of 'Part 4A dwellings'¹⁶⁶ (park homes) who rent a site, the notice periods are as follows:

- if the site agreement is a fixed term agreement entered into before the mortgage was granted or entered into after the mortgage was granted provided it is consistent with the terms of the mortgage agreement - end of fixed term and not less than 365 days;
- if the site agreement is a periodic site agreement that commenced before the mortgage was granted or that commenced after the mortgage granted provided it is consistent with the terms of the mortgage agreement - not less than 365 days; and
- if the site agreement was entered into after the mortgage was granted and is inconsistent with the terms of the mortgage agreement - not less than 90 days.¹⁶⁷

The Queensland Manufactured Homes Act¹⁶⁸ and the New South Wales Act¹⁶⁹ both provide that a successor in title obtains the benefits and is subject to the obligations of the park owner in relation to a site agreement. A mortgagee would therefore take possession subject to the rights of existing tenants. It should be noted that these Acts apply only to site agreements with home owners.

C-RIS Proposals:

¹⁶¹ *Residential Tenancies Act 1987* – section 81B

¹⁶² *Residential Tenancies Act 1987* - section 81A

¹⁶³ *Retirement Villages Act 1992* – section 17

¹⁶⁴ *Residential Parks Act 2007* (SA) – section 52(d)

¹⁶⁵ *Residential Tenancies Act 1997* (Vic) – section 316

¹⁶⁶ *Residential Tenancies Act 1997* (Vic) – see section 3 for definition of part 4A dwelling

¹⁶⁷ *Residential Tenancies Act 1997* (Vic) – section 317Zl

¹⁶⁸ *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 27

¹⁶⁹ *Residential (Land Lease) Communities Act 2013* (NSW) – section 4

Option A – Status quo

Long-stay agreements end when a mortgagee takes possession of the premises under the mortgage. The mortgagee cannot enter the premises to take recovery of possession without an order of the SAT. No compensation is payable for early termination.

Option B – Leases not automatically terminated upon mortgagee possession – the mortgagee would be required to take on obligations of park owner

This option would require a mortgagee, as successor in title, to take on the obligations of the park owner in relation to park lease agreements. The mortgagee would be required to comply with the relevant provisions of the Act with regards to notice and compensation if it took steps to terminate leases.

Stakeholder views

	Survey responses		Written submissions	
	Option A	Option B	Option A	Option B
Tenants	3	45	2	5
Park operators	7	-	6	
Other	-	-	1	-
TOTAL	10 (18%)	45 (82%)	9 (64%)	5 (36%)

Park operators and their representatives support maintaining the status quo (Option A). A number stated that there is a risk that financiers will impose more stringent requirements on park operators, possibly preventing operators from offering long fixed term leases¹⁷⁰. Others suggest that the costs of obtaining finance may increase, with these costs being passed on to tenants.

CIAWA¹⁷¹ suggests that such a provision could not be imposed retrospectively as it would have a significant effect on existing financing arrangements for park operators.

Shelter WA and WACOSS support Option A and raise concerns that if the viability of a park is adversely affected due to difficulties obtaining finance, fewer long-stay tenancies will be available.

The Consumer Advisory Committee also supports Option A and was of the view that it would be unreasonable to require the mortgagee or future owner to honour existing tenancies in the event of park owner insolvency.

The majority of tenants and their representatives support Option B, with a number expressing the view that lease agreements are binding documents and should be upheld. A common theme in the survey responses is that providing certainty of occupation for tenants in the event of mortgagee possession would give tenants greater peace of mind. This is of particular importance to older home owners who would potentially suffer significant financial loss as well as facing practical difficulties in relocating a home.

¹⁷⁰ Riverside Gardens, Confidential operator

¹⁷¹ Supported by Carine Gardens and Aspen

Tenants are of the view that they should not suffer any loss as a result of financial mismanagement by the park operator. It was suggested that financiers currently undertake a risk assessment when they lend money to a park operator, consequently the financiers should therefore be prepared to continue the operation of the park. Several stakeholders were of the view that the majority of parks have a viable cash flow, thus allowing them to be sold as going concerns.

PHOA expressed concerns about the emergence of large operators with significant financial risk and the potential for substantial losses to a large number of tenants.

As an alternative to Options A and B, NLV suggested that the RPLT Act should be amended so that those leases to which the mortgagee has given consent (either specifically or generically) continue if the mortgagee enters into possession.

The majority of respondents (87 per cent) were of the view that the same principles should apply to renters and home owners and that, if Option B were implemented, it should apply to all parks, not just lifestyle villages.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Affords mortgagee with flexibility to deal with the mortgaged property as appropriate. 	<ul style="list-style-type: none"> • Tenants still at risk of early termination with insufficient notice. • No compensation is payable to cover relocation costs.
Option B – Lease not automatically terminated upon mortgagee possession – the mortgagee would be required to take on obligations of park owner	<ul style="list-style-type: none"> • Tenants' interests afforded greater protection. Reduced risk of early termination due to mortgagee possession. • Certainty for mortgagees with regards to the rental stream for the ongoing park business. • Does not prevent mortgagee from reaching agreement with home owners in relation to the future of the park (ie. the mortgagee may buy out the remainder of the lease term from the home-owner). 	<ul style="list-style-type: none"> • May impose a cost burden on mortgagees. • Reduced flexibility and potential costs for mortgagees may make residential parks less attractive to financiers. • May result in mortgagees imposing restrictions (as a condition of finance) on the type of tenancies that may be offered by park operators, for example a park operator may be restricted from offering leases with long fixed terms. • May be of limited effect where the park operator is liquidated under Commonwealth law (ie. Corporations Act) and the liquidator appointed by the mortgagee successfully disclaims the lease.

The potential impacts of the options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of status quo.
- Option B – Negative impact. If residential parks become less attractive to financiers due to increased regulatory obligations, it may impact on ability of park operators to obtain finance. Costs of finance may increase or financiers may impose restrictions on the type of tenancies that may be offered. Potential decrease in the market value of the property.

Mortgagees:

- Option A – Positive impact. Affords mortgagee with flexibility to deal with the mortgaged property as appropriate.
- Option B – Negative impact. Reduces flexibility to a significant degree. A mortgagee would be required to comply with the requirements of the RPLT Act in terminating any leases, including relevant notice and compensation requirements.

Home owners and renters:

- Option A – Negative impact. Tenants remain at risk of having their lease terminated at short notice, with no compensation. The current provisions apply to both fixed term and periodic leases in the same manner. No compensation would be payable, so tenants would be required to bear the costs of relocation which can be quite significant, particularly for owners of park homes.
- Option B – Positive impact. Risk of early termination of leases significantly reduced. Mortgagee will be required to comply with the relevant provisions of the RPLT Act, including notice requirements and payment of compensation. However, if costs of finance increase, may impact on lease costs. If financiers impose restrictions on park operators it may limit the types of tenancies available.

Government:

- Option A – Negative impact. If operators become insolvent and leases are terminated on mortgagee possession, government may be called on to assist with relocation and/or provision of alternate housing options.
- Option B – Negative impact. If residential parks become a less attractive investment option, tenants may be forced to seek government housing assistance.

Assessment against the objective

- Option A – This option provides no protection for tenants in the event that a mortgagee enters into possession. Leases will terminate and mortgagees will be able to seek an order for possession from the SAT. Tenants bear the risk of loss if a mortgagee enters into possession.
- Option B – Provides increased certainty to tenants that their occupation will be unaffected by a mortgagee taking possession of the park. Mortgagees will still have the power to enter into possession and sell the property, but must comply with the requirements of the Act with regards to notice and compensation if leases are to be terminated. The risk of loss will

shift from tenants to financiers, who are better placed to assess that risk and take action to mitigate any loss.

10.5 RECOGNITION OF A TENANT

Issue

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

The C-RIS considered whether it would be appropriate to include a provision in the RPLT Act, similar to recent amendments to the Residential Tenancies Act, to provide a mechanism for recognition of tenants not named in the lease.

Objective

To provide recognition of persons as tenants in appropriate circumstances.

Recommendation

Option B – (with amendments) amend the RPLT Act to provide for recognition of a tenant.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report. Option B is consistent with the Residential Tenancies Act. It is recognised that probate issues may arise if some beneficiaries of a person's estate reside in the property and some do not. These matters would be dealt with separately in the appropriate court.

The majority of stakeholder responses to the report opposed this proposal¹⁷².

A number of operators argued that the first point of call should be for the occupier to approach the operator, who is the best judge of whether a person is a 'good fit' to reside at the park. Only if the operator unreasonably refuses should it be necessary for the occupier to go to the SAT. This would avoid occupiers/operators having to attend the SAT when the matter can be adequately addressed between the parties.

A large operator claimed that one of the very few points of influence for an operator is being able to manage the initial choice of whether to enter into a tenancy agreement with a person. An operator will typically use different criteria for assessing a person as a tenant, as opposed to assessing whether that person may reside in the premises (as the permitted occupant of another tenant). The operator noted that it had experienced many circumstances where it would have been completely inappropriate to accept a friend or relative as a new tenant of the home. This has been of particular concern where there was a mental illness; a particular disability; socially unacceptable behaviour; and/or criminal behaviour. It was the operator's view that any such amendment would directly conflict with the operator's broader obligations to tenants at parks as a whole.

¹⁷² GG Corp, NLV, Fourmi Pty Ltd, Discovery Parks, confidential operator, CIAWA and PHOA

In opposing Option B, PHOA argued that a person who had been residing in the premises, although not named as the resident in the long-stay agreement, should automatically have the right to have the lease agreement re-assigned to them.

In recognition of the role park operators play in ensuring a good “tenant mix” in the park, it is proposed to amend Option B so that an application to the SAT can only be made by the occupant if the operator has unreasonably refused to grant the occupant tenancy rights.

Throughout the statutory review process, tenants have commented that park operators play an important role in screening prospective tenants to ensure they meet any relevant criteria for residency which is of benefit to other residents in the park. As each park will have its own important considerations, it is considered appropriate that park operators continue to undertake the screening process in the first instance.

It is noted that Option B is consistent with the Government’s policy of improving the interaction between residential tenancy laws and family violence restraining orders by supporting a victim of family violence to remain in the home, wherever it is appropriate and safe to do so, rather than further victimising them by forcing them to leave their home.

Background

C-RIS Proposals:

Option A – Status quo

No formal mechanism for recognition of a person as a tenant.

Option B – Amend the RPLT Act to provide for recognition of a tenant

The RPLT Act would be amended to provide for a person who has been residing in premises, but is not named as a tenant, such as a relative or de facto partner, to apply to the 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.

The park operator would be given an opportunity to be heard in relation to such applications. It would also be open, through negotiations, for the park operator and the occupier to agree to the terms of a lease without the intervention of the SAT.

Stakeholder views

Tenants, their representatives and the Consumer Advisory Committee support Option B. A number of tenant respondents acknowledged the importance of the park operator being involved in the process of approving tenants.

Park operators appear to be of the view that no change is required and that they should continue to have the discretion to decide who may live in the park. CIAWA states that a comparison to the Residential Tenancies Act is not appropriate, as the situation of residents living in the community of a park is not the same as a normal residential tenancy. CIAWA is of the view that the risk of disadvantage to tenants should be dealt with by having a clear statement in the disclosure statement specifying that only the person named in the contract has the right to reside on the site and that if tenants want survivorship rights then all residents need to be included in the site agreement.

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Park operators retain discretion to assess suitability of persons residing in park – can benefit other tenants as well as the operator. 	<ul style="list-style-type: none"> • No formal mechanism for recognition of a tenant.
Option B – Amend the RPLT Act to provide for recognition of a tenant	<ul style="list-style-type: none"> • Provides a formal mechanism for recognition of tenants. • Park operators have input into process, can make submissions on suitability of applicant. 	<ul style="list-style-type: none"> • Limits discretion of park operators.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Park operators retain discretion to determine whether to enter into a long-stay agreement with a tenant.
- Option B – Minimal impact. Limits discretion of the park operator, but they will have the right to make a submission to the SAT on an application for recognition.

Home owners and renters:

- Option A – Negative impact. No formal process for seeking recognition of a tenant. 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.
- Option B – Positive impact. Provides a formal mechanism for recognition of tenants.

Government:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Minimal impact. Potential increase in the number of applications to the SAT.

Assessment against the objective

- Option A – No formal mechanism for recognition of a tenant.

- Option B – Provides a mechanism for recognition of persons as tenants, with the decision being made by an independent body (the SAT). Park operators will have the right to make submissions as to the suitability of the applicant.

Based on stakeholder feedback to the Statutory Review Report, the preferred option in the C-RIS (Option B) has been amended so that an application to the SAT can only be made by the occupant if the operator has unreasonably refused to grant the occupant tenancy rights

11 COMPENSATION

The RPLT Act sets out a number of specific termination events that trigger an entitlement to compensation. 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 before the end of the term because:
 - 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); or
 - 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 Act¹⁷³;
- if the parties cannot agree on the amount of compensation payable, the amount will be determined by the SAT¹⁷⁴; and
- if a long-stay tenant abandons the premises, the park operator is entitled to compensation for any loss incurred (including loss of rent) as a result of the abandonment¹⁷⁵.

The payment of compensation does not extend to the termination of periodic tenancies by a park operator, or to the situation where a fixed term agreement is not renewed at the end of the fixed term.

The impact of termination of a long-stay agreement and the consequential relocation costs will generally be of greater significance for home owners, due to the often substantial costs involved in relocating a home and the difficulties sometimes encountered finding an alternate park to relocate to. Many tenants stated that they would have difficulty meeting the costs of relocation, with one tenant estimating that it would cost up to \$60,000 to relocate his home¹⁷⁶. One operator¹⁷⁷ advised that transport costs in moving a new home into a park would generally be in the vicinity of \$13,000 to \$14,000 for the road transport and crane alone. On relocation, additional costs would be incurred in dismantling and re-erecting a home as well as disconnection and re-connection to utilities. Evidence provided by a designer and architectural draftsman indicates that substantial additional costs can also be incurred in ensuring that older homes meet current building codes when the home is relocated¹⁷⁸. Furthermore, relocation costs can sometimes increase quite significantly where work is required in order to bring a home up to the applicable standards (see part 5.3).

It should be noted that tenants have indicated a preference to remain in a park rather than be paid compensation, but it is acknowledged that in some instances this is not possible (particularly in relation to park closures).

¹⁷³ RPLT Act – section 46(1)

¹⁷⁴ RPLT Act – section 46(2)

¹⁷⁵ RPLT Act – section 47

¹⁷⁶ Cusack

¹⁷⁷ During discussions for purposes of collecting data

¹⁷⁸ Davey

11.1 DETERMINING COMPENSATION – FIXED TERM TENANCIES

Issue

Whether additional factors should be taken into account in determining compensation for relocation on termination of a fixed term tenancy.

Objective

To ensure that adequate compensation for loss incurred by tenants is payable in those circumstances where a tenant is entitled to compensation.

Recommendation

Option C – (with amendments) amend the RPLT Act so SAT has the power to take into account any financial loss incurred as a result of the termination of a long-stay agreement).

Statutory Review Report

Option C was the preferred option in the Statutory Review Report.

The proposed changes are consistent with the provisions currently in place for determination of compensation to renters under the RPLT Act. The benefits of giving greater flexibility to the SAT are considered to outweigh the disadvantages of any uncertainty that may arise. In some instances this power may operate to the benefit of operators, for example, if the SAT takes into account the fact that a home-owner has not maintained a home thus increasing the costs of relocation. In other instances it may assist tenants in meeting costs of involved in bringing a home up to the building code standards that apply at the time of the relocation.

Clear information should be included in the disclosure material about how compensation is calculated and to clarify the potential risks to home owners in relation to improvements to property and increased relocation costs in those instances where a home is not maintained adequately.

While the majority of stakeholder responses to the report supported this option¹⁷⁹, a number of respondents opposed the recommendation on the basis that the words “any financial loss” are too broad¹⁸⁰. One operator stated that it could lead to confusion and disagreement if or when a case was to go before the SAT. Operators argued that the legislation should include a degree of reasonableness as to what loss is compensated.

The Department acknowledges that the words “any financial loss” are quite broad and could be open to different interpretations. It is, therefore, proposed to amend Option C by replacing the words “any financial loss incurred” with clearer wording about the nature of the compensation entitlement to ensure that it directly relates to the event in question ie. early termination.

¹⁷⁹ Wolff, Izzard, Cockerham, Engwirda, NLV, Discovery Parks, Shelter WA, PHOA and CIAWA

¹⁸⁰ Fourmi Pty Ltd, GG Corp and confidential operator

Background

The RPLT Act provides that compensation for termination by the park operator is to be agreed between the tenant and the park operator, but if the parties cannot agree, it is to be determined by the SAT¹⁸¹.

The Act provides that the SAT may have regard to the following factors in determining compensation payable on termination of a fixed term site-only agreement (home owner):

- the cost of removing the relocatable home from the premises, including the costs of disconnecting utilities and other services;
- the cost of towing or carrying the relocatable home to another site designated by the tenant (up to 600km);
- the cost of erecting the relocatable home on the other site, including the cost of reconnecting utilities and other services;
- the costs of establishing the relocatable home at the new site, including any costs in landscaping the site to a standard comparable to that of the previous site; and
- the costs incurred by the tenant in travelling and transporting his or her possessions (up to 600km)¹⁸².

In relation to termination of a fixed term on-site home agreement (renter), the SAT may have regard to:

- the costs incurred by the tenant in travelling and transporting his or her possessions (up to 600km); and
- any other loss incurred as a result of termination of the agreement¹⁸³.

Legislation in other jurisdictions is relatively consistent with the provisions of the RPLT Act. However, the New South Wales Act specifically provides for compensation to be paid in circumstances where the park operator terminates the agreement and the home owner does not want to or is unable to relocate to another park. The NSW Act provides for payment of compensation for loss of residency (taking into account factors such as the remaining duration of the site agreement and change in value of the home) and the costs of relocation off the park. If the home owner sells the home off-site, any amount received is deducted from the compensation payable. Provision is also made for transfer of the home to the park operator in some circumstances¹⁸⁴.

¹⁸¹ RPLT Act – section 46(2)

¹⁸² RPLT Act – section 65(2) and RPLT Regulations – regulation 16

¹⁸³ RPLT Act – section 65(3)

¹⁸⁴ *Residential (Land Lease) Communities Act 2013 (NSW)* – section 141

C-RIS Proposals:

Option A – Status quo

Compensation will continue to be determined by the factors currently included in the RPLT Act.

Option B – Include additional specific factors to be taken into account by the SAT when determining compensation

Under this option additional matters would be included in the RPLT Act for the SAT to take into account in determining compensation, including:

- the length of time a tenant has been in occupation and the remaining duration of any fixed term agreement;
- the value of any improvements made to the site by the tenant, with the consent of the park operator; and
- any loss incurred by the tenant if relocation is not possible and a home is sold off-site.

If a home cannot be relocated due to dilapidation, the park operator would not be required to pay additional compensation.

Option C – Include a more general power for the SAT to take into account any other loss incurred by a tenant when determining compensation

Under this option the SAT would have a broad power to take into account any other financial loss a tenant has incurred as a result of the termination of a long-stay agreement. This would allow the SAT to take into account all relevant factors it thinks fit in relation to each specific matter.

A provision of this nature is already included in the RPLT Act in relation to determination of compensation for termination of an on-site home agreement¹⁸⁵.

Stakeholder views

	Survey responses			Written submissions		
	Option A	Option B	Option C	Option A	Option B	Option C
Tenants	4	17	31	-	4	-
Park operators	7	-	-	5	1	-
Other	-	-	-	1	-	-
TOTAL	11 (19%)	17 (29%)	31 (52%)	6 (54%)	5 (46%)	-

The majority of park operators and their representatives support Option A and are of the view that the RPLT Act currently makes fair provision for compensation for early termination¹⁸⁶.

¹⁸⁵ RPLT Act – section 65(3)(b)

CIAWA¹⁸⁷ noted that the rationale for payment of compensation is that the resident is being deprived of an otherwise enforceable contractual right and objected to the proposed additional factors set out in Option B on the following grounds:

- the length of time a tenant has been in occupation is not relevant, it is the balance of the term that is relevant;
- improvements to a site home are of no value to the park operator, improvements to the site itself are discretionary expenditure by a resident and should not be imposed on the park operator; and
- loss incurred if a home cannot be relocated should not be borne by the operator. This should not be a commercial risk of the park operator; this risk should be borne by the tenant.

Other park operators state that park operators rent a site to the tenant, it is irrelevant what the tenant chooses to do with the site or how long they are there¹⁸⁸ and that a park operator should not be responsible for investments tenants make while they are at the park¹⁸⁹. NLV states that any improvements made to a site should be at the tenant's risk unless the park operator somehow misled the tenant in making the improvements. Riverside Gardens stated that operators would likely withhold consent to improvements to avoid the risk of paying increased compensation.

CIAWA is of the view that Option C would introduce uncertainty into the market in relation to the exposure of operators to compensation costs. NLV is of the view that Option C is not reasonable for operators. The likely result being that every claim would be different with no certainty for operators; this would impact on a park operator's ability to undertake forward planning.

API warned against introducing uncertainty in relation to compensation costs and argues that if the legislation is unclear operators could be exposed to litigation, resulting in a decrease in the market value of parks.

The Consumer Advisory Committee supports Option A, but states that clear disclosure in relation to the availability and extent of compensation is required.

CIAWA and some operators¹⁹⁰ indicated that increased potential costs and uncertainty could result in increased rents or a reduction in the number of long-stay sites.

A number of tenants and their representatives support Option B¹⁹¹, with PHOA stating that the proposed additional factors would strengthen the existing provisions of the Act. Tenant responses to the survey indicate that tenants are of the view that improvements to their homes should be taken into account. Some tenants indicated that a key factor in relation to relocation is finding a suitable new location, with PHOA suggesting that location of the home (or park) is an additional factor that should be taken into account.

PHOA is of the view that under Option B operators would have a clear idea as to potential compensation costs for the additional factors; these factors could therefore be taken into account in making a decision to sell a park and in setting an appropriate sale price.

¹⁸⁶ CIAWA, Carine Gardens, Aspen, Confidential operator

¹⁸⁷ Views supported by Carine Gardens, Aspen and Confidential operator

¹⁸⁸ Confidential operator

¹⁸⁹ Survey response

¹⁹⁰ Riverside Gardens

¹⁹¹ Including PHOA, Goldfields CLC, COTA, Tenancy WA

Tenancy WA is supportive of Option B as it would give SAT greater clarity in making compensation determinations. Some tenant responses to the survey indicate that they are of the view that a specific list of factors would result in quicker determinations as to compensation than a more general power.

The majority of tenant responses to the survey support Option C (with a few respondents appearing to support a combination of Options B and C). The key reason for supporting this option is that the SAT will have the flexibility to take into account the specific circumstances of each case and make an appropriate determination as to compensation.

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Park operator liable only for actual relocation costs. 	<ul style="list-style-type: none"> • In some instances will limit the compensation payable to tenants, particularly where they are unable to find a park to move to and may be forced to sell a relocatable home at a loss.
Option B – Include additional specific factors to be taken into account in determining compensation	<ul style="list-style-type: none"> • Increases the range of specific factors that can be taken into account in determining compensation. May result in a fairer outcome for some tenants. 	<ul style="list-style-type: none"> • Some losses incurred by home owners may fall outside the list of specific factors. • Park operators potentially liable for increased compensation payments, this could limit flexibility for park operators. • Potential increase in costs for park operators, this may result in increased rents or a reduction in the number of long-stay sites available. • Operators may withhold consent for improvements in order to reduce potential compensation liability.
Option C – Include broad general power in relation to determination of compensation	<ul style="list-style-type: none"> • Allows the SAT to consider all losses incurred by a tenant in determining compensation payable. • Allows for reasonable, but unanticipated specific circumstances to be considered by the SAT. • Consistent with compensation provisions for renters – will result in improved consistency in the determination of compensation for renters and home owners. 	<ul style="list-style-type: none"> • Park operators potentially liable for increased compensation payments, this could limit flexibility for park operators. • Potential increase in costs for park operators, this may result in increased rents. • Does not provide specific guidance to the SAT as to what may be considered reasonable – may result in less certainty. This could impact on business planning and risk assessment by park

	Potential benefits	Potential disadvantages
		<p>operators.</p> <ul style="list-style-type: none"> • Potential increase in the number of applications to the SAT – legal costs for the parties may increase if the compensation criteria are not specific.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Compensation limited to those factors set out in the RPLT Act.
- Option B – Negative impact. Park operators may be liable to pay higher compensation to home owners. Likely to result in a loss of flexibility in relation to their ability to adjust the tenant mix. Could have an adverse impact on the financial viability of some parks. May result in a decrease in the number of long-stay sites available.
- Option C – Minimal impact. Park operators may be liable to pay higher compensation to home owners. May benefit park operators in some instances if the SAT takes into account factors such as a home owner's failure to maintain a home.

Home owners:

- Option A – Negative impact. Compensation limited to those factors set out in the RPLT Act.
- Option B – Positive impact. Will improve rights of home-owners in relation to compensation on termination. However, compensation limited to those factors specified with some losses. May result in a decrease in the number of long-stay sites available or an increase in rents. Tenants may have difficulty in obtaining park operator consent for improvements as operators will seek to limit potential compensation liability.
- Option C – Positive impact. Will improve rights of home-owners in relation to compensation on termination. Allows for broader range of factors to be taken into account. May result in a decrease in the number of long-stay sites available or an increase in rents.

Renters:

- These options do not affect renters.

Government:

- These options would have a minimal impact on government. Options B and C may result in a slight increase in the number of applications to the SAT.

Assessment against the objective

- Option A – There is a risk that tenants may not be compensated for all reasonable losses if no changes are made.

- Option B – This option allows for additional specific factors to be taken into account in determining compensation, however, there is a risk that the SAT may not be able to take some relevant factors into account. There will be some difficulties in framing a suitable set of factors to be taken into account; submissions indicate significant concerns in relation to the factors proposed in Option B.
- Option C – This option provides the greatest degree of flexibility for the SAT in making a compensation determination so that all relevant factors can be taken into account.

11.2 COMPENSATION ON TERMINATION OF A PERIODIC TENANCY

Issue

Tenants on periodic leases have less certainty about how long they will be living in the park and will have sole responsibility for all their relocation costs should their lease be terminated by the park operator, although the RPLT Act does provide for longer notice periods than other types of tenancy. Conversely, tenants on periodic leases have the flexibility to terminate the lease themselves on short notice (21 days)¹⁹², without any requirement to pay compensation to the park operator for termination of the lease.

Objective

To provide for payment of compensation to tenants for relocation costs on termination of their lease in appropriate circumstances.

Recommendation

Option A – (status quo) that the RPLT Act does not require compensation be paid for relocation costs on termination of a periodic tenancy.

Statutory Review Report

Option A was the preferred option in the Statutory Review Report as the potential costs and negative impact on the numbers of long-stay tenancies that might arise from implementation of Options B or C would likely outweigh any benefits of those options.

Clear information about the unavailability of compensation for periodic tenancies should be included in disclosure information.

The majority of stakeholder responses to the report supported this option¹⁹³. Those stakeholders who opposed the option re-confirmed their prior position on this issue¹⁹⁴.

The status quo is preferred as the potential costs and negative impact on the numbers of long-stay tenancies that might arise from implementation of the other options would likely outweigh any benefits of those options.

¹⁹² RPLT Act – section 44

¹⁹³ Cockerham, GG Corp, NLV, Discovery Parks, CIAWA and confidential operator

¹⁹⁴ Engwirda, Wolff and PHOA

Background

The compensation provisions of the RPLT Act do not apply to tenants with periodic agreements, even if the home owner has been living at the park for an extended period of time and/or made improvements to their site with the consent of the park operator. Many tenants have advised that they are only offered periodic tenancies by park operators and are not able to enter into fixed term leases. Based on responses to the telephone survey of parks, the majority of periodic leases appear to be in mixed-use parks.

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 preferable for tenants and less preferable for operators.

The models for payment of compensation vary across the jurisdictions, as do the grounds for termination. Compensation for termination of periodic agreements is payable in some limited circumstances in other states, including where the agreement is terminated on the grounds of undue hardship to the park operator¹⁹⁵, for required repairs or upgrading¹⁹⁶, for change of use¹⁹⁷, or on closure or compulsory acquisition of a park¹⁹⁸.

C-RIS Proposals:

Option A – Status quo

The RPLT Act does not require compensation be paid for relocation costs on termination of a periodic tenancy.

Option B – Provide home owners on periodic leases with the same compensation rights as home owners on fixed term leases

Under this option home owners on periodic agreements would have a right to seek compensation for relocation costs where the operator terminates the agreement in the following circumstances:

- if vacant possession is required on sale of the park;
- if the park operator terminates the agreement without grounds;
- if the agreement is frustrated; or
- on the grounds of undue hardship to the park operator.

Under this option there would be no change to the rights of renters on periodic leases.

¹⁹⁵ *Residential Parks Act 2007 (SA)* - section 81; *Residential Tenancies and Rooming Accommodation Act 2008 (Qld)* – section 350

¹⁹⁶ *Residential (Land Lease) Communities Act 2013 (NSW)* – sections 123,139 and 140

¹⁹⁷ *Residential (Land Lease) Communities Act 2013 (NSW)* – section 125

¹⁹⁸ *Residential (Land Lease) Communities Act 2013 (NSW)* – sections 124 and 126

Option C – Extend the right to compensation to home owners on periodic leases, but include a minimum time period of occupation in order to qualify

Under this option where a periodic agreement exceeds the specified period (for example, five years), a home owner would have a right to seek compensation for relocation costs` if the operator terminates the agreement in the following circumstances:

- if vacant possession is required on sale of the park;
- if the park operator terminates the agreement without grounds;
- if the agreement is frustrated; and
- on the grounds of undue hardship to the park operator.

Under this option there would be no change to the rights of renters on periodic leases.

Stakeholder views

	Survey responses				Written submissions		
	Option A	Option B	Option C	Other	Option A	Option B	Option C
Tenants	5	13	30	1		2	3
Park operators	7	-	-	1	4		
Other					1		
TOTAL	12 (21%)	13 (23%)	30 (53%)	2 (3%)	5 (50%)	2 (20%)	3 (30%)

This issue is not relevant to lifestyle villages which do not offer periodic leases.

Park operators oppose the expansion of compensation provisions to periodic tenancies. They are of the view that it is not reasonable to require park operators to compensate home owners on periodic leases for their relocation costs, as the very nature of these agreements are such that the right to occupy a site on the park is for a short period of time (which can continue to roll over for a long period), with no commitment being made to provide the current or another site after this period. The Consumer Advisory Committee supports Option A and states that compensation for termination of a periodic tenancy implies that it is not a periodic tenancy.

It should be noted that tenants advise that in some instances they are not offered the option of a long term lease and instead are only offered periodic tenancies, even though their preference would be for a longer fixed term.

CIAWA stated that where there has been no legal right taken away, there should be no right to compensation and is of the view that setting a timeframe (as suggested in Option C) would be arbitrary and uncommercial¹⁹⁹.

¹⁹⁹ Views supported by Carine Gardens, Aspen and Confidential operator

CIAWA²⁰⁰ also states:

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

Expanding the right to compensation to all long-stay tenants would have two effects based on the CIAWA member survey responses.

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

Other respondents also state that any requirement to pay compensation for relocation costs could significantly increase the operating costs of a park, possibly resulting in increased rents for all tenants, park closures²⁰¹ or a decrease in the number of long-stay tenancies available²⁰².

Tenants generally supported the application of compensation provisions to all tenancies, including periodic tenancies, particularly in those cases where a park is sold²⁰³ or in cases where they do not receive adequate notice (termination for frustration or hardship)²⁰⁴.

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">• Operators in mixed-use parks have continued flexibility to adapt to market conditions and adjust their holiday stay and long-tenant mix without added financial burden.• Home owners on periodic leases have flexibility to terminate on short notice and pay no compensation for termination of the lease.	<ul style="list-style-type: none">• Home owners on periodic leases would continue to have no entitlement to compensation for termination and would be required to pay costs of leaving a park.

²⁰⁰ Supported by Carine Gardens and Aspen

²⁰¹ Goldfields CLC,

²⁰² Department of Housing, CIAWA

²⁰³ Watt

²⁰⁴ Tenancy WA

	Potential benefits	Potential disadvantages
Option B – Home owners on periodic leases to have same right to compensation as those on fixed term leases	<ul style="list-style-type: none"> • Extends compensation provisions to home owners on periodic tenancies. • May result in fixed term tenancies being offered to those home owners who were otherwise only offered periodic tenancies. 	<ul style="list-style-type: none"> • Operators may find it more costly to operate a park due to increased compliance costs. • Operators may seek to recover increased costs through increased rent. • Standardised compensation provisions may not necessarily result in operators altering their long-stay tenant mix to offer more fixed term tenancies (for example, in mixed-use parks, park operators may instead offer more holiday stays). • Mixed-use parks may no longer be financially viable and so could result in the closure of mixed-use or park home parks.
Option C – Home owners on periodic leases to gain right to compensation after they have been in occupation for a specified minimum period	<ul style="list-style-type: none"> • Home owners on periodic leases who have been living in a park for an extended period of time would benefit from compensation provisions that are the same as those applying to a tenant who may have lived in a park for the same period, but who has a fixed term lease. 	<ul style="list-style-type: none"> • Time period qualification could result in operators terminating periodic lease agreements before the minimum time period in order to avoid the requirement to pay compensation. • May result in a reduction in the number of periodic tenancies offered, with park operators only offering short fixed term contracts or moving to more holiday stays. • Mixed-use or park home parks may no longer be financially viable and so could result in the closure of mixed-use or park home parks • Operators may find it more costly to operate a mixed-use or park home park and may seek to recover these costs through increased rent. • More complex to administer legislation, with different rights applicable depending on length of stay.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of status quo.

- Option B – Negative impact. Park operators could be liable to pay compensation to a greater number of tenants, particularly in mixed-use parks. Likely to result in a loss of flexibility with regards to the park operator’s ability to alter the tenant mix or change the use of sites. Could have an adverse impact on the financial viability of some parks.
- Option C – Negative impact. Park operators could be liable to pay compensation to a greater number of tenants. Likely to result in some loss of flexibility with regards to the park operator’s ability to alter the tenant mix or change the use of sites. Could have an adverse impact on the financial viability of some parks.

Home owners:

- Option A – Negative impact. Continuation of status quo.
- Option B – Minimal impact on home owners with fixed term agreements. Positive impact on home owners on periodic agreements in relation to compensation for relocation costs on terminations. May result in an increase in the number of fixed term agreements offered, however, more likely to result in a decrease in the number of long-stay tenancies available. Could result in increased rent.
- Option C – Minimal impact on home-owners with fixed term agreements. Positive impact on home owners on periodic agreements who have lived in the park for a longer time in relation to compensation for relocation costs on terminations. However, may result in termination of periodic agreements before expiry of the specified term. Could result in increased rent.

Renters:

- These options do not affect renters.

Government:

- Options B and C would have minimal impact on government. However, if fewer long-stay tenancies are available those who are unable to secure housing may seek government housing assistance.

Assessment against the objective

- Option A – Does not impose additional potential compensation rights or burdens in relation to periodic leases.
- Option B – Would impose a significant cost burden on park operators and does not recognise the nature of periodic agreements. This option would likely result in increased costs to tenants and a decrease in the numbers of long-stay tenancies available. Accordingly, Option B is not considered a viable option as the costs would likely outweigh the benefits.
- Option C - Would impose a cost burden on park operators in some instances and does not recognise the nature of periodic agreements. This option would likely result in increased costs to tenants and a decrease in the numbers of long-stay tenancies available. Accordingly, Option C is not considered a viable option as the costs would likely outweigh the benefits.

11.3 COMPENSATION AT THE END OF A FIXED TERM TENANCY

Issue

Currently there is no right to compensation under the RPLT Act when a fixed term lease expires and the tenant does not have an option to renew the lease. Tenants on fixed term leases will have sole responsibility for relocation costs if required to move at the expiry of the fixed term.

Objective

To determine appropriate circumstances for payment of compensation to tenants for relocation costs.

Recommendation

Option C – a park operator would be required to give a home owner adequate notice (for example, 180 days) that the tenancy is to end at the expiry of the fixed term.

Statutory Review Report

Option C was the preferred option in the Statutory Review Report as the potential costs and negative impact on the numbers of long-stay tenancies that might arise from implementation of Option B would likely outweigh any benefits of that option. Under Option C, tenants would be provided with adequate notice that their tenancy is not to be renewed at the expiry of the fixed term.

Clear information as to a tenant's potential liability for relocation costs at the end of a fixed term should be included in disclosure information.

The majority of stakeholder responses to the report supported this option²⁰⁵. Those stakeholders who opposed the option re-confirmed their prior position on this issue²⁰⁶. PHOA argued that park home owners must be entitled to reside where their home is situated for the viable life of the structure, or be eligible for compensation.

Option C remains the preferred option as the potential costs and negative impact on the numbers of long-stay tenancies that might arise from the other options would likely outweigh any benefits of those options.

Background

Legislation in other jurisdictions does not provide for payment of compensation at the end of a fixed term lease.

²⁰⁵ Cockerham, NLV, Fourmi Pty Ltd, Discovery Parks, confidential operator, Shelter WA and CIAWA

²⁰⁶ Wolff, Engwirda and PHOA

C-RIS Proposals:

Option A – Status quo

Under the current provisions of the RPLT Act a park operator is not required to pay compensation for a tenant's relocation costs at the expiry of the term under a fixed term lease.

Option B – Provide home owners on fixed term leases with a right to compensation for termination of a lease at the expiry of the fixed term

Under this option home owners on fixed term agreements would have a right to seek compensation for relocation costs where the operator does not renew the agreement at the expiry of the fixed term (provided the home owner is not in breach of the agreement).

Under this option there would be no change to the rights of renters on fixed term leases.

Option C – Require park operator to provide notice about intention at the end of a fixed term lease

Under this option a park operator would be required to give a home owner adequate notice (for example, 180 days) that the tenancy is to end at the expiry of the fixed term. This would give the home owner an opportunity to plan for relocation or seek to negotiate a renewal of the lease.

Stakeholder views

	Survey responses				Written submissions		
	Option A	Option B	Option C	Other	Option A	Option B	Option C
Tenants	5	20	21	2	1	1	2
Park operators	7	-	1	-	2	-	4
Other					1	-	
TOTAL	12 (21%)	20 (36%)	22 (39%)	2 (4%)	4 (36%)	1 (9%)	6 (55%)

Park operators were of the view that compensation should not be payable for relocation at the end of a fixed term, as the agreement is for a specified period and tenants are aware as to when their lease ends. CIAWA²⁰⁷ stated that long term fixed tenancies of any nature do not have a guarantee at their end for an extension and that there is no legal basis to impose an obligation to compensate a resident when a tenancy expires.

The Consumer Advisory Committee supports Option A and states that compensation at the end of a fixed term tenancy implies that it is not in fact a fixed term tenancy.

²⁰⁷ Supported by Carine Gardens and Aspen

CIAWA and a number of park operators²⁰⁸ support Option C as this provides certainty for both the park operator and the tenant at the expiry of the lease.

Some tenants support Option B as significant costs can be involved in relocation. PHOA is of the view that introduction of compensation obligations would result in greater commitment by park operators and investors in the industry, with permanent residents delivering a reliable, predictable income stream. However, a number of tenants and their representatives acknowledged that tenants should be aware of the end date of their fixed term and plan accordingly. These respondents supported Option C²⁰⁹ as the fairest option.

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Operators have continued flexibility to adapt to market conditions. • Operators have certainty with regards to potential liability for relocation costs – i.e. compensation will not be payable unless a lease is terminated prior to the expiry of the fixed term. • No change in compliance costs for operators. 	<ul style="list-style-type: none"> • Home owners on fixed term leases have no right to compensation for relocation costs if a lease ends the expiry of the term.
Option B – Home owners on fixed term leases to be given a right to compensation for relocation costs at the expiry of the fixed term	<ul style="list-style-type: none"> • May provide incentive for operators to offer extensions or renewals of leases at the expiry of a fixed term. • Home owners on fixed term leases would find it easier to relocate as the operator will pay for costs of relocation. 	<ul style="list-style-type: none"> • Providing compensation at the end of a fixed term fails to recognise the nature of the tenancy i.e. that the contractual agreement expires at the end of the term. • Operators may find it more costly to operate a park due to increased compliance costs and may seek to recover increased costs through increased rent. • Some parks may no longer be financially viable, could result in the closure of parks. • May result in a reduction in the number of long-stay tenancies offered, with mixed-use parks only offering holiday stays.

²⁰⁸ Carine Gardens, Aspen, NLV

²⁰⁹ COTA, Shelter WA, WACOSS

	Potential benefits	Potential disadvantages
Option C – Park operator to provide notice to the home owner about the park operators intentions at the expiry of the lease term	<ul style="list-style-type: none"> • Will allow a home owner adequate time to plan for relocation. • Does not impose an additional cost burden on park operators. • Less risk of increased rent for tenants. • Greater certainty for both operators and tenants. 	<ul style="list-style-type: none"> • Does not compensate home owners with regards to costs of relocation.

Park operators:

- Option A – Positive impact. Continuation of status quo.
- Option B – Negative impact. Park operators would be liable to pay compensation to a greater number of tenants. Likely to result in a loss of flexibility with regards to ability to adjust the tenant mix when fixed term leases expire. Could have an adverse impact on the financial viability of some parks.
- Option C – Minimal impact, as it simply imposes a notification requirement on the operator.

Home owners:

- Option A – Negative impact. Continuation of status quo.
- Option B – Positive impact. Will improve rights of tenants on fixed term agreements in relation to compensation for relocation costs on termination. May result in increased extensions or renewals of fixed term agreements. However, could result in increased rent or reduction in number of long-stay tenancies available.
- Option C – Positive impact. Provides home owner with notice as to the operator's intentions. Will not assist with relocation costs, but provides greater certainty and will enable home-owner to plan ahead.

Renters:

- These options do not affect renters.

Government:

- Options B and C have limited impact on government. However, if fewer long-stay tenancies are available those who are unable to secure housing may seek government housing assistance.

Assessment against the objective

- Option A – This option does not impose additional potential compensation rights or burdens in relation to termination of a fixed term lease at the expiry of the term.
- Option B - This option would impose a significant cost burden on park operators and may be viewed as extending the rights of tenants beyond those agreed to between the parties in a fixed term lease agreement. Accordingly, Option B is not considered a viable option.

- Option C – This option does not impose additional compensation rights or burdens, but provides a mechanism to give tenants adequate notice that a tenancy will not be renewed. This should provide greater certainty and give tenants time to plan for relocation.

11.4 COMPENSATION ON RELOCATION WITHIN A PARK

Issue

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

The RPLT Regulations provide that a long-stay agreement must contain a clause which:

- specifies whether a park operator reserves the right to reposition the tenant's relocatable home to a comparable site in the park if necessary; and
- provides that the park operator must pay for all the tenant's expenses resulting from any repositioning of the relocatable home²¹⁰.

Any disputes in relation to payment of compensation for repositioning a relocatable home can be dealt with by the SAT as a dispute arising under the long-stay agreement.

Objective

To uphold a tenant's right to payment of compensation in relation to costs of relocation within a park.

Recommendation

Option B – include a specific provision in the RPLT Act to give tenants a right to seek compensation for costs of relocating within a park.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it would provide greater clarity around rights to compensation on relocation within a park.

A majority of stakeholder responses to the report supported this option²¹¹. In opposing this option, two respondents argued that a park operator should be required to provide alternative accommodation while all structures are relocated, and organise and fund the relocation, including if alterations are required to fit the new site.

Option B remains the preferred option as it provides greater clarity around rights to compensation if a tenant is required by the park operator to relocate to another site within the park.

²¹⁰ RPLT Regulations – regulations 4-7, schedules 1 - 4

²¹¹ Cockerham, GG Corp, Fourmi Pty Ltd, Discovery Parks, CIAWA and confidential operator

Background

C-RIS Proposals:

Option A – Status quo

Under this option there would be no change. The parties would continue to rely on the long-stay agreement to address the right to compensation for relocation within a park.

Option B – Include a specific provision in the RPLT Act to give tenants a right to seek compensation for costs of relocating within a park

Under this option a tenant would have a specific statutory right to seek compensation from the park operator for the costs of relocation within a park without having to rely on the lease agreement to address this issue.

Any dispute between the parties as to the costs payable for relocation would be able to be dealt with by the SAT. The costs of relocation would include costs incurred in dismantling, moving and re-erecting the dwelling, disconnecting and reconnecting utilities, establishing the new site to a standard equivalent to the previous site and moving the tenant's personal belongings. For renters the costs would be limited to moving the tenant's belongings.

Stakeholder views

	Survey responses			Written submissions	
	Option A	Option B	Other	Option A	Option B
Tenants	6	44	1	3	2
Park operators	5	1	1	4	1
Other	-	-	-	-	1
TOTAL	11 (19%)	45 (78%)	2 (3%)	7 (64%)	4 (36%)

There is general support from both park operators and tenants for a requirement to compensate tenants for relocation costs when moving within a park (at the request of the operator). Tenants expressed the view that they should not be required to bear the costs of relocation as a result of a decision of the operator. Some respondents were of the view that it would be clearer if this obligation were set out in the RPLT Act (Option B)²¹².

CIAWA²¹³ expressed the view that this should remain a contractual matter between the parties and that compensation should not be payable for relocation of a periodic tenant. One operator was of the view that park operators would terminate tenancies rather than relocate them in order to avoid payment of compensation²¹⁴.

²¹² Goldfields CLC, Riverside Gardens

²¹³ Supported by Carine Gardens and Aspen

²¹⁴ Confidential operator

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">• Issue addressed in the agreement itself, parties likely to look to the agreement in determining their rights.	<ul style="list-style-type: none">• Prescribed provision does not specify a mechanism for determining compensation.
Option B – Include specific provision in the RPLT Act to give tenants right to seek compensation on relocation within a park	<ul style="list-style-type: none">• Rights to compensation would be clearly set out in the legislation.• Consistent with other compensation provisions.• Reduces the likelihood of disputes.	<ul style="list-style-type: none">• None discernible.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo.
- Option B – Negative impact. Rights to compensation and mechanisms for determination of compensation would be set out in the legislation rather than being left to the parties to negotiate.

Home owners and renters:

- Option A – Negative impact. Continuation of the status quo.
- Option B – Positive impact. Rights to compensation and mechanisms for determination of compensation would be clarified in the legislation.

Government:

- These options would have minimal impact on government.

Assessment against the objective

- Option A – No clear right to compensation on relocation within a park included in the prescribed clauses for inclusion in long-stay agreements. Mechanisms for determination are not prescribed.
- Option B – Provides greater clarity in relation to right to compensation on relocation within a park and mechanisms for determining compensation.

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

The RPLT Act does not directly address the potential liability of a sole tenant’s estate for the unexpired term of the lease when the tenant dies. There is therefore considerable potential for confusion and disputes to arise between a park operator and a deceased tenant’s estate as to when rent should cease to be paid and when the premises can be re-let.

Some legislation, including Western Australia’s Residential Tenancies Act, limits the liability of a deceased sole tenant’s estate by providing for termination of the tenancy following the death of a tenant.²¹⁵ Other legislation provides that a ‘home owner’ includes any personal representative or beneficiaries,²¹⁶ who would take on the lease and therefore receive the benefits and assume the obligations of the home owner after their death.

12.1 RENTERS

Issue

The situation for the estate of a deceased renter tenant is generally less complicated than is the case for the estate of a home owner. Generally speaking, the estate simply needs to provide vacant possession of the premises to the park operator following the death of the tenant, ensuring that the premises have been returned in the same condition as when first leased, save for fair wear and tear.

If there is no next of kin or no one appointed to manage the affairs of the deceased tenant, in the absence of specific provisions within the RPLT Act, it can be confusing for a park operator to know how to handle any goods and documents left behind.

Objective

To provide for an appropriate balance between the rights and obligations of the park operator and those of a renter’s estate following the death of a tenant.

Recommendation

Option B – (with amendments) amend the RPLT Act to provide that where a sole renter dies, the long-stay agreement terminates upon their death.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report.

The report also proposed that Option B also include a direct reference to the handling of possessions and documents left behind by the deceased tenant in the same manner as abandoned goods.

²¹⁵ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) – section 277; *Residential Tenancies Act 1997* (Vic) – section 228, *Residential Tenancies Act 1987* – section 60

²¹⁶ *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 8, *Residential (Land Lease) Communities Act 2013* (NSW) – section 4

The majority of stakeholder responses (both tenants and park operators) supported this option²¹⁷. Two operators opposed the option, arguing that the option places an unfair burden on the operator to clean the premises without being able to seek reimbursement or rent from the tenants' estate²¹⁸.

In recognition of the costs that could be incurred by operators in having to clean the deceased tenant's premises, it is proposed to amend Option B to also provide operators with the ability to claim reasonable cleaning costs from the estate of the deceased tenant.

Background

C-RIS Proposals:

Option A – Status quo

The RPLT Act would continue to be silent on the issue. Common law rules would continue to apply.

Option B – Liability of a renter who is a sole tenant terminates upon the death of the tenant

Amend the RPLT Act to provide that where a sole renter dies, the long-stay agreement terminates upon their death.

Stakeholder views

	Survey responses		Written submissions	
	Option A	Option B	Option A	Option B
Tenants	12	33	-	-
Park operators	-	6	-	2
Other	-	-	-	4
TOTAL	12 (24%)	39 (76%)	-	6 (100%)

The overwhelming majority of respondents to the C-RIS and the survey supported amending the RPLT Act to include a provision that the long-stay tenancy agreement with a sole tenant terminates upon the tenant's death. Most respondents saw this as being fair and consistent with the Residential Tenancies Act.

In providing support for Option B, some respondents requested that express reference be made for the goods left behind by the deceased tenant to be treated in the same manner as abandoned goods.²¹⁹

²¹⁷ Wolff, Cockerham, Engwirda, NLV, Discovery Parks, CIAWA and PHOA

²¹⁸ GG Corp and confidential operator

²¹⁹ CIAWA, Carine Gardens, Aspen

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">• None discernible.	<ul style="list-style-type: none">• The law remains unclear as to when the tenancy agreement ends. Park operators and the tenant's estate would have to resort to the common law.• Possibly more matters proceeding to the SAT as the uncertainty could lead to more disputes.
Option B – Liability of a renter terminates upon the death of the tenant	<ul style="list-style-type: none">• Provides certainty to all parties.• Tenancies under the RPLT Act are treated consistently with tenancies under the Residential Tenancies Act.• Operator will be able to deal with abandoned goods.	<ul style="list-style-type: none">• Park operator cannot seek rent from the long-stay tenant's estate for any period after the death of the tenant, including for any period that the premises cannot be re-let due to cleaning and/or repair requirements.• Park operator can apply for compensation for loss of rent during this period, however would have to be able to demonstrate loss incurred.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Negative impact. The uncertainty of the law on this issue makes it difficult for park operators to know when the former tenancy agreement has ended and the premises can be re-let. This can be compounded if there is no next of kin for the deceased tenant or if the estate is unwilling or unable to negotiate with the park operator on the winding up of the former tenancy agreement. May lead to unnecessary disputes with the estate of the former tenant.
- Option B – Positive impact. Provides greater certainty around when the long-stay agreement ends and the premises can be re-let. Also provides greater certainty for the handling of a tenant's possessions left behind after their death.

Estate of Deceased Renter:

- Option A – Negative impact. The uncertainty of the law on this issue makes it difficult for the executor of the former tenant's estate to know when the former tenancy agreement has ended and the premises can be re-let. May lead to unnecessary disputes between the estate of the former tenant and the park operator.
- Option B – Positive impact. Provides greater certainty for the executor of the former tenant's estate around when the long-stay agreement ends and therefore liability for the premises ends.

Government:

- Option A – Negative impact. The Department would continue to receive requests for information about how to deal with the tenancy agreement of a deceased tenant. May result in disputes being taken to the SAT as the uncertainty of the law on this issue may cause confusion.
- Option B – Positive impact. May reduce calls to the Department as the law is more certain. May reduce disputes being taken to the SAT.

Assessment against the objective

- Option A – Although the common law may provide an appropriate balance between the rights of the park operator and the tenant's estate, the uncertainty surrounding the law often leads to confusion and unnecessary disputes.
- Option B – Provides certainty and clarity as well as achieving an appropriate balance between the rights of the park operator and the tenant's estate.

12.2 HOME OWNERS

Issue

The situation for home owners is somewhat different to that of renters. For site agreements with home owners, the estate of the home owner will need to sell or remove the home; therefore automatic termination of the long-stay agreement is not considered appropriate. During this period the park operator is unable to re-let the site and would suffer financial loss if the rent is not paid.

While it is acknowledged that a park operator may suffer financial loss if a deceased tenant's home is left on a site for which the tenant's estate is no longer liable to pay rent, stakeholders also provided examples during the consultation workshops of instances where the tenant's estate were still paying rent after a two year period because the park operator was the sole selling agent and the park operator appeared to be placing greater emphasis on selling new homes within the park. Tenants perceived that park operators had no incentive to progress the sale of the deceased tenant's home as the park operator was continuing to receive rent from the deceased tenant's estate.

Objective

To provide for an appropriate balance between the rights and obligations of the park operator and those of a home owner's estate following the death of a tenant.

Recommendation

Option A – (status quo with amendments) that the estate of deceased home owner is liable to pay rent until the dwelling is either sold or removed.

Statutory Review Report

Option A (status quo) was the preferred option in the Statutory Review Report.

However the report acknowledged that residents have a great concern that on occasions they have no power over the timeframe in which a park home is sold; such power being controlled by the park operator. It is, therefore, proposed that the RPLT Act be amended to add a provision that a deceased home owner's estate may apply to the SAT to terminate a long-stay agreement (therefore ending the estate's liability to pay rent), or to make such other order as appropriate, if the SAT is satisfied that the park operator is interfering with or obstructing the estate in its endeavours to sell the park home. It is considered that this amended option achieves the best balance of the rights of the park operator and the estate of the deceased tenant.

It was also noted that clarification of the prohibition on a park operator from requiring a resident to appoint them or their agent as the sole selling agent (see part 17.6) should ensure that the estate of the deceased tenant will have much greater control over the selling of the home and therefore could reduce the risk of disputes and issues arising between the park operator and the estate of the deceased tenant.

Stakeholder responses to the report were relatively evenly split, with seven respondents supporting the option²²⁰ and six respondents opposing it²²¹. A number of tenants and PHOA suggested alternatives to the recommendation, one being that the parties should be able to reach agreement for rent to be deferred until a sale can be affected.

In recognition of both tenant and park operator requests for flexibility in this matter, it is proposed that while the long-stay agreement will continue until the home is sold or removed; the parties (the park operator and the home owner's estate) will be able to agree to a deferral of the payment of rent or other arrangement for reduced rent to be paid (ie. by relocating the home to another area in the park).

Background

C-RIS Proposals:

Option A – Status quo

The estate of the deceased home owner is liable to pay rent until the dwelling is either sold or removed.

Option B – Place a time limit on the liability of the tenant's estate for the long-stay agreement

The estate of the deceased person is liable to pay for a limited period, for example 6 months from the grant of probate.

²²⁰ Cockerham, GG Corp, NLV, Fourmi Pty Ltd, Discovery Parks, CIAWA and confidential operator

²²¹ Wolff, Izzard, Engwirda, Hunt, Hermann and PHOA

Stakeholder views

	Survey responses		Written submissions	
	Option A	Option B	Option A	Option B
Tenants	26	20	-	3
Park operators	5	-	5	-
Other	-	-	2	2
TOTAL	31 (61%)	20 (39%)	7 (58%)	5 (42%)

The park operator respondents who favoured Option A²²² all stated that it is not the park operator's responsibility to set the selling price for the park home or to remove it from the site if the park home cannot be sold, and for this reason the park operator should not suffer financial detriment through non-payment of rent if settlement of the estate becomes protracted. One park operator²²³ gave an example of where the various beneficiaries of the estate could not agree on an appropriate selling price for the home and therefore it took approximately two years for the park home to be sold. The park operator was of the view that in such circumstances, where the ability to effect a speedy sale of the park home is outside their control, they should not be disadvantaged by having the estate's liability to pay rent for the site cease. Other park operators²²⁴ stated that the ongoing liability to pay rent acted as an incentive for the beneficiaries of the estate to resolve the estate efficiently.

These views appear to be largely premised on a situation where the trustees of the estate have full control over the process of selling the park home and resolving the estate. Tenant respondents who favoured Option B²²⁵ noted that where the park operator insists on being the selling agent, if rent continues to be paid until the home is sold; there is no financial incentive for the park operator to sell the home. One tenant respondent²²⁶ noted that in their residential park, there have been occasions where it has taken the park operator more than two years to sell the park home, with the estate remaining liable for the rent for the entire period.

It was also noted that the full rent is charged for the site, despite the fact that no tenant is occupying the park home or utilising the park facilities.²²⁷ The contrary view to this, however, is that while a deceased tenant's park home remains in-situ, the park operator cannot re-let the site to another long-stay tenant and the park operator is losing business during this time unless they can charge rent. Some operators have reported that the rent liability is deferred until such time as the dwelling is sold.

²²² Riverside Gardens, Aspen Parks, NLV, Carine Gardens, CIAWA, Confidential operator

²²³ Riverside Gardens

²²⁴ Aspen Parks, Carine Gardens, CIAWA

²²⁵ Watt, Confidential tenant A, PHOA, survey responses

²²⁶ Confidential tenant A

²²⁷ Survey responses

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">• Provides financial incentive for the trustees of the deceased's estate to appropriately set the selling price for the park home and to settle the estate as quickly as possible.• Ensures a park operator is not financially disadvantaged if the estate takes a long time to be settled.	<ul style="list-style-type: none">• If the park operator is the selling agent, no financial incentive for the park operator to quickly sell the park home as rent continues to be paid for the whole period.
Option B – Include a time limit on the liability of the tenant's estate	<ul style="list-style-type: none">• If the park operator is the selling agent, provides financial incentive for the park operator to effect a speedy sale of the deceased's home and ensures that the deceased's estate is not unfairly charged for rent for an excessive period of time, particularly where the trustees of the estate have no power over the sale of the park home.	<ul style="list-style-type: none">• If the sale of the park home is delayed for reasons beyond the park operator's control, such as the granting of probate or when an external agent has been appointed to sell the park home, the park operator may be financially disadvantaged if the park home fails to sell within the specified time limit and the park operator is therefore prevented from re-letting the site.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of status quo. Rent for the site would continue to be paid by the deceased tenant's estate until such time as the park home is sold or removed from site.
- Option B – Negative impact if the sale or removal of the park home from the site exceeds the prescribed period of liability for rent.

Estate of Home owner:

- Option A – Negative impact if the sale of the home takes time.
- Option B – Positive impact. Limits the deceased estate's liability for rent to a timeframe considered reasonable for the sale of the park home.

Government:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Minimal impact. Potential for minor increase in enquiries and complaints.

Assessment against the objective

- Option A – Balances the rights of the park operator and the deceased tenant's estate provided the estate has control over the selling of the park home and the settling of the deceased tenant's estate. However, if the park operator is appointed as the selling agent for the deceased tenant's park home, this option fails to meet the rights of the estate as there is no financial incentive for the park operator to quickly sell the home, particularly where the park operator is also selling new homes at the park. Creates a potential conflict of interest.
- Option B – Balances the rights of the park operator and the deceased tenant's estate in circumstances where the park operator insists on being appointed as the selling agent for the deceased tenant's park home as it provides an incentive for the park operator to progress the sale quickly.

However, where the estate appoints an external agent, or where the estate has unrealistic expectations about the selling price of the home, or the granting of probate is delayed, this option does not balance the rights of the park operator who may suffer financially if they are unable to require rent from the estate yet are unable to re-let the site.

13 TERMINATION OF TENANCY FOR DAMAGE TO PROPERTY AND VIOLENT BEHAVIOUR

Due to the communal nature of park living, dangerous or violent behaviour by an individual has the capacity to significantly disrupt the lives of other residents in a park, more so than in other traditional rental arrangements. The impact is further compounded by the reality that the majority of residents in residential parks are seniors and are often more vulnerable.

The RPLT Act currently includes provisions that tenants must not cause damage, create a nuisance or interfere with the reasonable peace, comfort or privacy of neighbouring tenants.²²⁸ Where a tenant does engage in this conduct, a park operator can issue a default notice for breach of the agreement,²²⁹ providing the tenant with 14 days to remedy the situation.²³⁰ If this does not occur, a park operator can then issue a termination notice and,²³¹ if required, apply for a possession order at the SAT.²³²

However, where the tenant's conduct is more serious in that they cause serious damage to the premises or injury to the park operator or another person lawfully on the premises (such as another tenant), a park operator can apply for a hearing at the SAT and seek an immediate order for possession of the agreed premises.²³³

Concern has been raised that the current provisions do not provide a park operator with sufficient options to respond quickly when a tenant is acting dangerously or violently. Stakeholder feedback suggests that it can take some time to obtain a hearing before the SAT and in the interim there is little that the park operator can do to remove the offending tenant in order to protect the safety of other residents, staff and the premises. There is also a perception that, in the absence of a specific power under the RPLT Act or a SAT order, police are often reluctant to intervene to forcibly remove an offending tenant from the premises, even temporarily.

Like Western Australia, park operators in Queensland²³⁴ can apply to a tribunal for orders to terminate a tenancy and for possession of the rented premises when a tenant causes serious damage or injury, without having given prior notice. In contrast, in Victoria and South Australia park operators have the option to give a resident an exclusion notice or immediate termination notice (these legislative models forming the basis of Option C presented below).

Issue

The C-RIS posed the question as to whether additional measures should be included in the RPLT Act to enable park operators to effectively deal with damaging and violent behaviour by tenants.

²²⁸ RPLT Act – Schedule 1 clauses 6 & 10

²²⁹ RPLT Act – section 40(1)

²³⁰ RPLT Act – section 40(3)

²³¹ RPLT Act – section 40(4)

²³² RPLT Act – section 68

²³³ RPLT Act – section 71

²³⁴ *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 38(1)(b) and (c)

Objective

To provide a timely, effective and fair mechanism to enable park operators to deal with tenants who cause or threaten to cause damage to property on the park or injury to those lawfully on the park.

Recommendation

Option A – (status quo) a park operator must apply for a hearing before the SAT for an order for termination of the tenancy and possession of the premises if a tenant is causing, or is threatening to cause, serious damage to property or injury.

Statutory Review Report

Option A (status quo) was the preferred option in the Statutory Review Report.

Although the majority of respondents supported Option C in responding to the C-RIS, the report noted there is the risk that a tenant could be issued with a notice terminating the long-stay agreement in unwarranted circumstances. It was also noted that the tenant would have protection in so far as the tenant cannot be forced to vacate the premises without an order for possession from the SAT; however there is a very real risk that most tenants will not be aware of this right and therefore would vacate the premises upon receiving the notice of termination. The consequence of this risk is that some tenants may be forced into homelessness in unwarranted circumstances. There is also a risk that tenants who have received a notice in circumstances where it is warranted would disregard the notice and not leave.

While Option B would allow park operators to respond to immediate danger by issuing a tenant with an immediate exclusion notice, the report noted that the lack of judicial oversight in the making of this decision is not supported by WA Police, as it could be asked to assist in the forcible removal of tenants from the park. There is also a risk of delay in the SAT hearing the matter once an application has been made for termination of the long-stay agreement. Further, as with Option B, there is a very real risk that most tenants will not be aware of their right to seek an injunction if they believe the exclusion notice is being issued without merit and therefore vacate the premises upon receiving the notice of termination. The consequence of this risk is that some tenants may be forced into homelessness in unwarranted circumstances.

The responses to the C-RIS survey suggest that violent or threatening behaviour by long-stay tenants is not a frequent issue encountered in parks. While the report acknowledged that dangerous or violent behaviour by an individual has the capacity to significantly disrupt the lives of other residents in a park, it was considered that there are presently sufficient mechanisms in place to address this issue.

In terms of preventing the occurrence of such behaviour, the report noted that as part of its Frontline 2020 program, WA Police is trialling local-level community policing. Local police teams are taking ownership of smaller geographic areas so as to be more accessible and to forge closer relationships with the communities in the areas that they police. Local police teams will be responsible for working with community members including residents, business owners, government and non-government agencies within those areas to tackle the issues behind crimes, address community concern and engage with other service providers. While the local teams will be available for urgent matters if required, dedicated response teams will be tasked with responding to urgent calls from the community for help or problems occurring immediately.

In relation to violent behaviour that is occurring:

- park operators are able to contact their local police for immediate assistance where a long-stay tenant, their visitor, or any other person on the park (such as a holidaymaker) engages in violent behaviour or property damage. The newly created WA Police response teams have been established to assist in such situations;
- section 71 of the RPLT Act provides that a park operator may apply 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 instances²³⁵; and
- long-stay tenants may apply for a misconduct restraining order (MRO) against another park resident. MROs are 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. An applicant must attend the Magistrates Court to apply for an order.

While the report recommended that there be no change the current situation, this issue will continue to be monitored to assess whether further regulatory intervention may be required in the medium term.

Stakeholder responses to the report were relatively evenly split, with six respondents supporting the option²³⁶ and five respondents opposing it²³⁷, re-confirming their prior position on this issue.

While the position of stakeholders is acknowledged; the Department notes that WA Police does not believe Options B and C are workable. Furthermore, the SAT is of the view that Option C is not workable. Therefore, on balance the Department's view is that there are presently sufficient mechanisms in place to address this issue. However, this issue will continue to be monitored to assess whether further regulatory intervention may be required in the medium term.

²³⁵ This is similar to section 129 of the NSW *Residential (Land Lease) Communities Act 2013* which provides that an operator of a community may apply to the Tribunal for a termination order on the ground of serious misconduct, without the need for a termination notice to be given. The Tribunal's termination order may take effect before or after the end of the fixed term if the site agreement is for a fixed term

²³⁶ Wolff, Cockerham, Discovery Parks, PHOA and CIAWA

²³⁷ GG Corp, NLV, Fourmi Pty Ltd, Izzard and confidential operator

Background

C-RIS Proposals:

Option A – Status quo

A park operator would continue to be required to apply for a hearing at the SAT (without issuing a notice) seeking an order for termination of the tenancy and possession of the premises if a tenant is causing, or threatening to cause, serious damage to property or injury.

Option B – Include provisions in the RPLT Act to allow operators to issue an exclusion notice

Under this option the RPLT Act would be amended to enable a park operator to issue a two business day exclusion notice to a tenant. Excluding a tenant from the park for two days may be sufficient to deal with the matter, particularly if it is a one-off event and out of character for the tenant.

The operator could apply to the SAT for a termination order if permanent exclusion is considered necessary or a tenant could apply to the SAT to dispute the notice.

The SAT could order:

- termination of the tenancy if the basis is satisfactorily established and the circumstances are sufficient to warrant it;
- the resumption of the tenancy if the SAT was satisfied the behaviour would not be repeated or the basis for the tenant or guest to receive the notice has not been made out; or
- the refund of any rent paid during the exclusion period and reasonable expenses.

The existing provisions of the RPLT Act would remain, whereby a park operator can apply for a hearing at the SAT (without issuing a termination notice) to seek an order to terminate a tenancy if a tenant is damaging property, behaving violently or threatening violence.

It would be an offence if:

- an operator does not have reasonable grounds to give the exclusion notice;
- a tenant remained on, or returned to, the park during the exclusion period; or
- a park operator allows a person to occupy the rented premises during the exclusion period, except anyone who previously resided with the excluded person immediately prior to the exclusion notice being given (for example, the family of an excluded person can remain on the premises in a domestic violence situation).

Option C – Amend the RPLT Act to provide for the issuing of a termination notice and include provisions to allow operators to issue an exclusion notice for violent acts (Vic/SA model)

Under this option a park operator would be able to issue an immediate termination notice where a tenant or visitor causes or threatens to:

- damage property on the park; or
- injure those lawfully on the park; or
- seriously breach the quiet enjoyment of other residents.

The tenant would be able to make an application to the SAT to appeal the notice.

As outlined fully under Option B, a park operator could issue an immediate two-day exclusion notice to the tenant (or until the matter is heard by SAT if a termination order is sought or a tenant disputes the notice), where the behaviour, which may be a one-off incident, is considered extremely anti-social. The same offences in relation to the exclusion notice as apply in Option B would apply in Option C.

Stakeholder views

	Survey responses			Written submissions		
	Option A	Option B	Option C	Option A	Option B	Option C
Tenants	9	18	27	1	1	1
Park operators	-	-	5	-	1	4
Other	-	-	-	1	1	2
TOTAL	9 (15%)	18 (31%)	32 (54%)	2 (17%)	3 (25%)	7 (58%)

Park operator respondents and long-stay tenant respondents agreed that some form of regulatory change is necessary in order to better equip park operators to manage incidences of violent and damaging behaviour when it occurs. CIAWA noted in its submission:

‘The current provisions do not give the park operator adequate power to protect the interests of other park users. Without some reform of the regulatory framework for violent and disorderly behaviours it is difficult for a park operator to protect the interests of themselves and the other park residents’.

However, Tenancy WA was not in favour of any amendment to the current provisions and argued that existing provisions in the Act and general access to the WA Police should be sufficient to deal with instances of seriously disruptive behaviour. In particular, Tenancy WA noted that ‘[I]t is undesirable to introduce a new tool to park operators that could potentially be used unreasonably or in a retaliatory way’.

Option C was the option most preferred by respondents, with seven submission responses and 54 per cent of survey respondents supporting this option. All park operators who answered this question in the survey were in favour of Option C. One park operator respondent to the survey noted that police are often not available to attend and if they do, they are unsure of what action they can take within the confines of the residential park and under the RPLT Act.

However, despite strong support for Option C, some respondents raised concern about the potential for park operators to abuse this type of legislative provision if it is introduced. PHOA, in its submission noted that residents could be intimidated by the abuse of such a provision, if the action is viewed as “biased, a knee jerk reaction to a one off event, a convenient way to remove a tenant from a site that is required for another purpose”. PHOA advocated that any provision contain safeguards so that an evicted person knows their rights.

While there was general agreement amongst stakeholders that some form of regulatory change is desirable, the survey results do not suggest that this is currently a major issue confronting tenants and park operators. In response to the survey, only three park operators answered that they frequently have long-stay tenants threatening or causing serious damage to property or being violent towards others. Only two tenant respondents answered that in relation to a park that they live in, it is frequent that a long-stay tenant threatens or causes serious damage to property or is violent. Seventeen tenant respondents to the survey question answered that they have never experienced a long-stay tenant threaten or cause serious damage to property or been violent.

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Park operators and long-stay tenants are familiar with the current provisions and processes. 	<ul style="list-style-type: none"> • Park operators may not have sufficient scope to deal with dangerous or violent behaviour that requires a more immediate response. • Other tenants and/or property might be placed at risk.

	Potential benefits	Potential disadvantages
Option B – Include provisions to issue an exclusion notice for violence	<ul style="list-style-type: none"> • Will enable park operators to respond to a situation quickly, if required, to minimise the risk to other people in the park. • Provides park operators with some flexibility to tailor the most appropriate response to the circumstances of the situation. • The provisions may act as a deterrent. • Contains safeguards to ensure the process is not subject to indiscriminate use. • Provides the park operator with a mechanism to address a serious breach of quiet enjoyment. • If the intention is to permanently exclude a tenant, the park operator would still be required to institute proceedings to terminate a tenancy once an exclusion notice has been issued, with the decision being made by an independent third party. 	<ul style="list-style-type: none"> • If an exclusion notice is issued without merit, it would be unfair for a tenant to face immediate, severe consequences of homelessness despite having access to compensation and reinstatement. • Potential for unfair use of the exclusion notice which would require a tenant to defend the notice in the SAT. • A park operator would still be required to institute proceedings to terminate a tenancy once an exclusion notice has been issued, which takes time and costs money. • Possible resource implications for the SAT in hearing matters quickly. • The proposal may be considered excessive in relation to the level of reporting by tenants and park operators of incidences of threatening behaviour of violence.
Option C – Widen scope to issue termination notice and include ability to issue an exclusion notice for violence	<ul style="list-style-type: none"> • If the tenant vacates the premises upon receiving a termination notice, it avoids the need to involve the SAT, which reduces time and costs involved. • If there is a dispute about the facts, the matter would ultimately be determined by the SAT as an independent third party. • The provisions may act as a deterrent. • It would allow park operators to respond to a situation quickly, if required, to minimise the risk of harm to other tenants. • It provides park operators with some flexibility to tailor the most appropriate response to the circumstances of the situation. • The option contains safeguards to ensure the process is not subject to indiscriminate use. 	<ul style="list-style-type: none"> • Tenants issued with a termination notice may not understand their right to remain in the premises if they disagree with the notice and that the park operator must obtain an order from the SAT before they can gain vacant possession of the premises. • If an exclusion notice is issued without merit, it would be unfair for a tenant to face immediate, severe consequences despite having access to compensation and reinstatement. • A park operator would still be required to institute proceedings to obtain possession of the premises if the tenant does not comply with the termination notice, which takes time and costs money. • Possible resource implications for the SAT in hearing matters quickly. • The proposal may be considered excessive in relation to the level of reporting by tenants and park operators of incidences of threatening behaviour of violence.

Impact on stakeholder groups

Park operators:

- Option A – Minimal impact. Continuation of the status quo. Park operators have not reported that incidences of tenants engaging in threatening or violent behaviour are a frequent issue encountered in parks.
- Option B – Positive impact. Park operators are better able to respond to urgent situations by issuing an exclusion notice for a period of two business days.
- Option C – Positive impact. Park operators have flexibility to respond to urgent situations by issuing an exclusion notice for a period of two business days or, if the circumstances warrant it, by issuing a notice terminating the long-stay agreement without first having to make an application to the SAT.

Home owners and renters:

- Option A – Minimal impact. Continuation of the status quo. Tenants have not reported that incidences of tenants engaging in threatening or violent behaviour are a frequent issue encountered in parks.
- Option B – Positive impact. Provides a park operator with the ability to more quickly respond to disruptive tenants therefore maintaining the quiet enjoyment and safety of the remaining tenants in the park. There is a risk that a tenant could be excluded from the park for reasons that lack merit, however there is a limited risk of this as the option includes a penalty for any park operator who issues an exclusion notice without reasonable grounds for doing so. In any event, in order to terminate the long-stay agreement the park operator would still be required to obtain an order from the SAT.
- Option C – Negative impact. Park operators have the greatest flexibility to respond to violent behaviour from tenants and this in turn benefits those tenants whose quiet enjoyment and safety is at risk. However, with this option the park operator has the ability to issue the tenant with a notice terminating the long-stay agreement without first having to obtain an order from the SAT. While a tenant who has received a notice of termination of their long-stay agreement from a park operator cannot forcibly be removed from the premises without an order for possession from the SAT, it is unlikely that many tenants will be aware of this right and will vacate the premises, even if they disagree with the notice. This increases the risk of the provision being used inappropriately by a park operator with the likely cost to the tenant being homelessness.

Government:

- Option A – minimal impact on government.
- Options B and C – negative impact. May result in a slight increase in the number of applications to the SAT. It is also possible that Options B and C may result in increased inquiries and complaints to the Department, however this would be offset to an extent by a reduction in calls from tenants who are complaining about being threatened or abused by another tenant and the perception that the park operator is not taking any action to address the situation.

WA Police does not think Options B and C are workable. In its view, both options place WA Police in the difficult position of being required to enforce decisions that are made ex-judicially. In such instances, WA Police may be asked to forcibly remove a tenant from a park without the reassurance that the decision to exclude has been made by an objective judicial authority. For this reason, WA Police has advised that it is unable to support either Option B or Option C.

The SAT has also indicated that Option C is not workable as it does not accord procedural fairness to the tenant, who would not be provided with an adequate opportunity to answer the claims against them. The SAT has also advised that the ability to expedite matters, or to hear urgent matters, is limited due to the requirement to accord respondents to an action with the right to be heard.

Assessment against the objective

- Option A – Risk that park operators will not be able to respond to violent and dangerous behaviour by tenants in a timely and effective way under the RPLT Act. However, other mechanisms are available with the assistance of WA Police.
- Option B – Provides a timely and effective mechanism for responding to tenants acting in a violent or dangerous manner. It also provides a degree of fairness in that a long-stay agreement can only be terminated by the SAT. This ensures that termination of a long-stay agreement cannot be done capriciously or as retaliation. There may be a delay in obtaining an order from SAT depending upon SAT resources at the time, however the park operator could continue to utilise the exclusion notice until the SAT hears the matter if the behaviour of the tenant warrants such action. However, WA Police does not support the proposal to permit a park operator to issue a two-day exclusion notice. WA Police support is limited to those instances where an order of the SAT has first been obtained.
- Option C – Provides a timely and effective mechanism for responding to tenants acting in a violent or dangerous manner. There is potential under this option that a park operator could act capriciously or in retaliation for a tenant seeking to enforce their rights because a park operator can issue a termination notice without having to refer the matter to SAT. A tenant would need to apply to the SAT to dispute such a notice. WA Police and the SAT do not support this Option.

Restraining Orders

The C-RIS also noted the possibility that the RPLT Act could be amended to give the SAT specific power to issue a restraining order without prior notice being given to the tenant. It was suggested that the SAT be given the power to issue an order restraining a tenant or other persons on the premises from engaging in conduct that creates a risk of serious damage to property or personal injury. The SAT was strongly opposed to this latter suggestion, noting that such power would be a fundamental shift in the jurisdiction of the Tribunal and that the Tribunal does not have enforcement or prosecution functions. Other respondents²³⁸ also spoke against the SAT having power to issue restraining orders, being of the view that these powers were more appropriately left with the Magistrates Court. Therefore, the Statutory Review Report recommended that this option not be pursued further.

²³⁸ Goldfields CLC, Riverside Gardens

14 RENT VARIATION

Frequent, large or unpredictable rent increases can have a significant impact on park tenants, many of whom are on fixed incomes.

However, balanced against 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. Restricting flexibility around rents may reduce investment in residential parks, which could adversely impact on the accommodation options of existing and prospective long-stay tenants.

14.1 FREQUENCY OF RENT INCREASES

Issue

The RPLT Act establishes minimum notice periods for rent increases and regulates the frequency of rent reviews. Different requirements apply to renters and home owners.

Renters must be given 60 days' notice of an increase in rent. If a renter has a fixed term agreement, the rent may only be increased during the term if the agreement provides for such an increase²³⁹. The minimum interval between rent increases is six months.²⁴⁰

For home owners, rent can only be reviewed in accordance with the tenancy agreement²⁴¹. The rent can be increased at minimum intervals of 12 months.²⁴²

The C-RIS did not consider that a change to these requirements is required at present, unless clear evidence was provided to the contrary.

Recommendation

That no change be made to the current provisions in the RPLT Act in relation to the the frequency of rent reviews – ie. maintain the status quo..

Statutory Review Report

The status quo was the preferred option in the Statutory Review Report.

All stakeholders who responded to the report supported no change being made to the current provisions of the RPLT Act in relation to the frequency of rent reviews²⁴³.

²³⁹ RPLT Act – section 30

²⁴⁰ RPLT Act – section 30 - The first rent increase may be less than six months if done in accordance with a rent review schedule disclosed in a written notice to the tenant before the agreement is signed

²⁴¹ RPLT Act – Schedule 1, Item 4

²⁴² RPLT Act – Schedule 1, Item 4 - 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

²⁴³ Wolff, Cockerham, Engwirda, GG Corp, confidential operator, NLV, Fourmi Pty Ltd, Discovery Parks, CIAWA and PHOA

Stakeholder views

	Survey responses		Written submissions	
	Change frequency	No change	Change frequency	No change
Tenants	7	50	-	1
Park operators	1	5	-	5
Other	-	-	-	3
TOTAL	8 (12.7%)	55 (87.3%)	0 (0%)	9 (100%)

The overwhelming majority of respondents were of the view that no change is required to the frequency of rate increases. In light of this response, and consistent with the stated position in the C-RIS, it is proposed that no change be made to the current provisions of the RPLT Act in relation to the frequency of rent reviews.

14.2 METHOD OF VARYING RENT

Issue

There have been calls for increased certainty in relation to rent reviews. Specifically, some stakeholders have proposed that reviews be set as a percentage increase based on changes to the CPI or that market reviews of rentals not be permitted. Historically, government is reluctant to impose caps, or place significant restrictions on, levels of rental in a tenancy market. For example, the review of the Residential Tenancies Act²⁴⁴ found that rent capping is a disincentive to investment and can have a detrimental impact on both property owners and tenants in terms of property values, property maintenance and availability of housing stock to rent. Accordingly, mandating the use of rent review methods linked to CPI is not considered a viable option without substantial evidence of a clear need for this level of intervention in the market.

Objective

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

Recommendation

Option C – that the method of rent review be clearly specified in a long-stay agreement but market rent reviews are not permitted.

²⁴⁴ Department of Consumer and Employment Protection *Review of the Residential Tenancies Act 1987* p84

Statutory Review Report

Option C was the preferred option in the Statutory Review Report as it provides the greatest amount of certainty and transparency to home owners and renters on fixed term agreements for the life of their agreements. This is particularly important as many long-stay tenants are on fixed incomes and need to know what their rent liability will be into the foreseeable future, not just at the commencement of the agreement. The consequences of not being able to afford a rent increase are particularly dire for a home owner who may not be able to afford to relocate their home to an alternative residential park.

While Option C does pose some limitations on park operators, these limitations were considered minimal as there remain available many alternative means of calculating a rent review for inclusion in a long-stay agreement, including increasing rent by CPI, a percentage of the existing rent or by a fixed dollar amount. It is considered that the benefit of improved transparency and certainty for residents greatly outweighs the cost of this limitation on park operators. The report also proposed to allow park operators to seek to increase the rent to take into account a significant unforeseen increase in the cost of operating the park (see part 14.3).

Because the prohibition on ratchet clauses in clause 4(5) of Schedule 1 may have limited application as a consequence of the proposed amendment, it was proposed that the RPLT Act be amended to clarify that nothing in the Act is to be taken to preclude the rent decreasing by agreement between the parties during the term of the long-stay agreement.

Stakeholder responses to the report were evenly split, with six respondents supporting the option²⁴⁵ and six respondents opposing it²⁴⁶, re-confirming their prior position on this issue. In not supporting Option C, the Housing Authority considered the removal of the 'market rent' option would unfairly constrain the options available to park operators.

While option C remains the preferred option, it will be clarified that park operators will not be locked into only one method of rent review for the whole of the long-stay agreement. Rather, the proposal requires the operator to nominate a specific method of review for each review date – for example, the majority of annual rent reviews could be based on changes in CPI, however the agreement could stipulate that every five years the method will be an increase of a fixed dollar amount or a percentage of the current rent charged.

Option C is consistent with recent changes to the Residential Tenancies Act. The emphasis will be on disclosure so as to increase certainty for all parties.

Background

The RPLT Act currently requires that a rent review provision in a site-only agreement must specify, for each review, a single basis for calculating the rent payable on and after the review date²⁴⁷. Alternating methods of review can be set out for different review dates, for example:

- rent variation based on changes in the consumer price index (CPI);
- a set percentage increase;

²⁴⁵ Wolff, Cockerham, Engwirda, NLV, Shelter WA and PHOA

²⁴⁶ Housing Authority, confidential operator, GG Corp, Fourmi Pty Ltd, Discovery Parks and CIAWA

²⁴⁷ RPLT Act, Schedule 1, item 4

- an increase by a set amount; or
- market review of rental.

The RPLT Act provides that if a long-stay agreement provides for a market review of rental then, when calculating the change in rent the park operator must have regard to a report prepared by a licensed valuer²⁴⁸.

In relation to agreements with renters, there is no requirement in the RPLT Act for the agreement to specify the method to be undertaken in conducting reviews of rent. In relation to a fixed term agreement with a renter, the RPLT Act only requires that the agreement state that the rent will or may be increased.

The Residential Tenancies Act has recently been amended to provide that the rent under a fixed term tenancy may only be increased during the term of the agreement if the amount of the increase, or the method of calculating the increase, is set out in the tenancy agreement²⁴⁹. Under the Residential Tenancies Act, the method of calculating the increase must be objectively measurable²⁵⁰. Market reviews are not considered to be an objective measure and are therefore not permitted under that Act.

C-RIS Proposals:

Option A –Status quo

Review method to be specified in agreements with home owners. No requirement to specify method of review for renters. Market reviews of rental permitted.

Option B – Require the method of rent review to be specified for all agreements

Under this option, all agreements (except for periodic agreements with renters) would be required to clearly specify the manner in which the rent is to be reviewed for each rent review date. This option does not change the requirements in relation to home owners, but does provide greater certainty for renters. The parties would be free to choose the method of review to be used for each review date. Market reviews would be permitted. Amendments could be made to address some concerns about market reviews, for example, by requiring that tenants be given access to the valuer's report.

Option C – Require the method of review to be specified in all agreements, but prohibit certain types of review (e.g. market reviews)

Under this option, all agreements (except for periodic agreements with renters) would be required to clearly specify the manner in which the rent is to be reviewed for each rent review date. The parties would be free to negotiate the method of review to be used for each review date, within certain parameters. The RPLT Act would prohibit certain methods of review, for example, market reviews of rental.

²⁴⁸ RPLT Act – section 31

²⁴⁹ Residential Tenancies Act – section 30

²⁵⁰ Explanatory memorandum - Residential Tenancies Amendment Bill 2011 – page 16

Stakeholder views

CPI linked increases

While a small number of respondents to the C-RIS were in favour of restricting rent increases to CPI²⁵¹, there was strong opposition to using CPI as the only means of calculating an increase to the rent. API raised concern that restricting rent increases to CPI has the potential to negatively impact on the viability of a residential park. API also stated that restrictions could also give rise to both above and below market rents.

Riverside Gardens was also strongly opposed to limiting rent increases to CPI alone, particularly in residential parks and lifestyle villages where leases tend to be longer fixed term agreements, for example 30 year lease terms. Riverside Gardens stated that restricting rent increases in this way would likely lead to financiers being less willing to lend money for the development of new parks or the refinancing of existing parks. It was further noted that a lack of financing opportunities could lead to the unviability of parks and the general deterioration of park quality which will result in a loss of value of not only the park, but also the home owner's asset.

Other options for varying rent

	Survey responses			Written submissions		
	Option A	Option B	Option C	Option A	Option B	Option C
Tenants	9	16	25	-	-	1
Park operators	5	0	0	1	2	-
Other	-	-	-	3	1	5
TOTAL	14 (26%)	16 (29%)	25 (45%)	4 (31%)	3 (23%)	6 (46%)

Almost half of all respondents supported Option C. Groups such as Tenancy WA, Council on the Ageing, Shelter WA and the Western Australian Council of Social Services (WACOSS) all felt that it was important that tenants under the RPLT Act had the same protection against market rent reviews as tenants under the Residential Tenancies Act. This was argued on the basis that market rent reviews lack transparency and are often arbitrary. A resident submission²⁵² supported this contention, stating that residents are given no clue as to how the market rent has been calculated.

In addition to the lack of transparency, Shelter WA and WACOSS raised doubt about the accuracy of market rent valuations, stating that parks vary so widely in relation to many key criteria, including location of the park and amenities provided, that it would be almost impossible to identify a suitably comparable property against which to benchmark the market rent. The Consumer Advisory Council also raised this point, noting that the residential park market in Western Australia is small and diverse and therefore obtaining valid and reliable comparisons of similar sites would be difficult.

²⁵¹ Izzard, Dave

²⁵² Watt

However, the Consumer Advisory Committee still felt that market based rent reviews should be available to park operators provided that the comparison was of “like for like” sites and tenants were provided with a copy of the valuation report.

Despite there being majority support for removing market rent reviews as a means of calculating a rent increase, there was still some support for retention of this method of varying rent.

NLV argued that to prohibit market based rent reviews limited a park operator’s commercial freedom and would likely see a number of park operators resort to shorter fixed term agreements in order to avoid being locked in to leases that would become uneconomic over the longer term. Riverside Gardens argued that market rent reviews should be retained, as the loss of this option would likely lead to significant increases in rents payable by tenants and a move away from CPI linked increases.

In their arguments in favour of retaining the right to use market based rent reviews, CIAWA argued against having to use valuers to determine market rent²⁵³ as it is costly and the benefit of using valuers often did not justify the expense. CIAWA stated that parties to a long-stay agreement should be able to exercise commercial common sense. However, there is concern that removing independent valuers altogether from the process would only increase the perceived arbitrariness and lack of transparency currently attributed to market rent reviews.

It is also the view of CIAWA that tenants would be better protected by imposing restrictions similar to those contained in section 11 of the *Commercial Tenancies (Retail Shops) Agreements Act 1985*, which prohibit ratchet rent review clauses. It should be noted that a prohibition on ratchet rent clauses, that is, rent review clauses that allow rent only to increase but not to decrease if the method of rent review would result in a decrease of rent, is already included in clause 4(5) of Schedule 1 of the RPLT Act.

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Park operators retain flexibility in relation to method of rent reviews for renters. 	<ul style="list-style-type: none"> • Uncertainty remains for renters about the rent review methods to be applied.
Option B – Review method to be specified in agreement - method agreed by the parties	<ul style="list-style-type: none"> • Provides certainty to all tenants by requiring the review method to be specified. 	<ul style="list-style-type: none"> • Market reviews would continue to present difficulties for some tenants due to difficulties in identifying comparable premises. • Park operators will incur costs in obtaining a valuer’s report in relation to a market review. These costs may be passed on to tenants.

²⁵³ As required by section 31 of the RPLT Act

	Potential benefits	Potential disadvantages
Option C – Review method to be specified in agreement – method agreed by the parties, but some methods prohibited (e.g. market reviews of rental)	<ul style="list-style-type: none"> • Provides some certainty to all tenants by requiring the review method to be specified. • Would remove perceived difficulties associated with market reviews of rental. • Consistent with the Residential Tenancies Act. 	<ul style="list-style-type: none"> • If market reviews are prohibited it may make it less attractive for park operators to offer long-term leases as they could potentially be locked into leases with lower rentals that reduce return on investment.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of status quo. Park operators continue to have flexibility in relation to method of rent reviews for renters.
- Option B – Minimal impact. Park operators would have to apply the same requirement of stipulating the method of rent review in a fixed term renter's agreement as they currently are required to do in a site-only agreement. The impact will be minimal as the majority of residents in residential parks have site-only agreements. This option does not change the requirements in relation to site-only agreements.
- Option C – Minimal impact. As with option B, park operators would have to stipulate a method of rent review in a fixed term renter agreement. Park operators will be affected by the removal of market rent as a method of rent review. However, it is considered that this impact will only be moderate as there are many other methods of rent review available to the park operator, such as using CPI, increasing by a fixed dollar amount or increasing by a percentage of the current rent charged.

Home owners:

- Option A – Minimal impact. Continuation of status quo.
- Option B – Minimal impact. No change for home owners.
- Option C –Positive Impact. The removal of market rent reviews brings greater transparency and certainty to the amount of any proposed rent increases.

Renters:

- Option A – Negative impact. Renters would continue to have uncertainty as to how any rent increase is going to be calculated during the term of their fixed term agreement.
- Option B –Positive impact for renters on a fixed term as it will provide certainty as to the maximum rent that may be payable for the agreement for the entire life of the agreement.

- Option C –Positive impact for renters on fixed term agreements as the removal of market rent reviews brings greater transparency and certainty to the amount of any proposed rent increases and will provide certainty as to the maximum rent that may be payable for the entire life of the agreement. .

Government:

- Option A – Minimal impact. Continuation of the status quo.
- Option B – Minimal impact. Greater certainty for renters will lead to fewer disputes over excessive rent increases.
- Option C – Minimal Impact. Greater certainty for home owners and renters will lead to fewer disputes over excessive rent increases. If fewer long-term tenancies are being made available, those who are unable to secure housing may seek government housing assistance and add to existing pressures on these services.

Assessment against the objective

- Option A – Fails to provide certainty and fairness for home owners and renters.
- Option B – Provides improved certainty for renters, however does not improve certainty for home owners.
- Option C – Provides improved certainty and fairness for both home owners and renters. This option does not unduly impact on park operators as there remain many other options for calculating rent increases which will allow a park operator to adequately and appropriately cover their costs while also providing greater certainty and transparency to long-stay tenants.

14.3 UNFORSEEN COSTS

Issue

Park operators require the continued capacity to budget and achieve a commercially viable return on their investment in the park. The proposal to prohibit the more broadly framed 'market rent review' from the options available to park operators does pose a risk that the more transparent method of calculating a rent increase (such as by reference to CPI or a set percentage) will not have the capacity to take into account significant increases in unforeseen expenses payable by the park operator. Consideration may need to be given to including a mechanism in the RPLT Act to allow park operators to increase rents in order to cover any unforeseen costs.

Objective

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

Recommendation

Option B – allow for increases in rent for specified reasons, provided the park operator provides adequate notice and justification.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report, particularly in light of the proposal to prohibit the use of market rent reviews as a means of calculating rent increases under long-stay tenancy agreements.

In responding to the report, a majority of respondents (predominately park operators and their representative body) supported this option²⁵⁴, with tenants and their representative bodies opposing it²⁵⁵.

Option B remains the preferred option as it allows park operators to appropriately and transparently recover specified unforeseen costs. The use of the SAT as the final arbiter ensures the provision is equitable to all parties.

Background

The C-RIS posed the example that is currently available under the *Manufactured Homes (Residential Parks) Act 2003* (Qld) that allows a park operator to increase the rent if it is necessary to cover:

- a significant increase in the operational costs in relation to the park (including significant increases in taxes, rates or utilities costs);
- unforeseen significant repair costs in relation to the park; or
- significant facility upgrades in relation to the park.

The park operator must give the home owner two months' notice of the proposed rent increase, setting out the amount of the increase, the basis for the increase and the date payable. If the home-owner does not agree to the proposal, the park operator may apply to the tribunal for an order about the proposed increase²⁵⁶.

C-RIS Proposals:

Option A – Status quo

Park operators' ability to recover additional costs is dictated by their particular lease agreement.

Option B – Allow for increases in rental for specified reasons, provided park operator provides adequate notice and justification.

Park operators would be able to increase rent for specified purposes, such as a significant increase in the operational costs in relation to the park (including significant increases in taxes, rates or utilities costs) or unforeseen significant repair costs in relation to the park.

Sufficient notice (for example, 60 days) would be required to be given to tenants, including details of the increase and adequately outlining the justification for the increase.

If the tenants do not agree to the proposed increase, the park operator would be able to apply to the SAT for an order for the increase to apply.

²⁵⁴ Cockerham, GG Corp, NLV, confidential operator, Discovery Parks and CIAWA

²⁵⁵ Wolff, Engwirda, Shelter WA and PHOA

²⁵⁶ *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 71

Stakeholder views

	Survey responses			Written submissions		
	Option A	Option B	Other	Option A	Option B	Other
Tenants	31	21	1	1	1	-
Park operators	2	3	-	4	1	-
Other	-	-	-	6	2	
TOTAL	33 (57%)	24 (41%)	1 (2%)	11 (73%)	4 (27%)	- (0%)

There was widespread support for Option A by both tenants and park operators; however their reasons for supporting Option A are very different. The reasons given by tenant respondents and tenant advocates for supporting Option A were that park operators should be able to plan and manage their budgets to address all possible expenses and that long-stay tenants should not be required to pay for management mistakes.²⁵⁷ Opposite to this view, park operators who indicated support for Option A were of the view that the RPLT Act, as it currently stands, provides sufficient flexibility for the parties to negotiate terms within their long-stay agreements to allow for rent increases that adequately reflect the cost of business from time to time.²⁵⁸

There was some bilateral support for Option B. Those in support of Option B acknowledged that there can be unexpected increases in the costs of running a park. For example, the Consumer Advisory Committee noted that many parks are ageing and there will be a genuine need for these park operators to upgrade facilities and infrastructure. Such costs may not be able to be accommodated by the normal rent increases catered for in long-stay agreements. Riverside Gardens pointed to examples in recent years where there have been significant increases in shire rates, electricity and water rates which have well exceeded CPI. These costs have put considerable pressure on park operating budgets. One tenant respondent noted that if a park operator was not able to increase rents in the case of unforeseen expenses, they may be forced into liquidation or bankruptcy and this would have even more dire consequences for the residents of that park.

²⁵⁷ Survey responses, Tyndall, PHOA, COTA, Shelter WA, Tenancy WA

²⁵⁸ Riverside Gardens, Confidential operator

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Park operators continue to have flexibility to determine how additional costs will be recovered in the lease agreement. • Tenants have some certainty that rents will not increase beyond a certain level and can budget accordingly. 	<ul style="list-style-type: none"> • May not provide sufficient flexibility to allow for recovery of all unforeseen costs by park operators if not addressed in the agreement. • May have a detrimental impact on a park, for example if operator cannot afford to maintain property or becomes insolvent.
Option B – Allow for increases in rental for specified reasons, provided park operator provides adequate notice and justification	<ul style="list-style-type: none"> • Park operators will have the flexibility to increase rent payable if the increases are justifiable. • Requirement for determination by the SAT if no agreement reached should provide comfort to tenants that increases will not be made without justification. • Allows for parties to agree to a rent increase, without the need for an application to the SAT. 	<ul style="list-style-type: none"> • The need to make an application to the SAT in some instances imposes an administrative burden on park operators. May increase costs for park operators. • Potential increase in the number of matters before the SAT – cost implications. • May result in increases in rent that have not been budgeted for by the tenant.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Negative impact. May not provide flexibility to recover unforeseen costs, particularly if the option to have a market rent review is prohibited under the RPLT Act.
- Option B – Positive impact. Will provide park operators with the flexibility to recover unforeseen costs and therefore retain viability of the park. If an application to the SAT is required in order to achieve the rent increase, this may result in increased administrative and legal costs for the park operator.

Home owners and renters:

- Option A – Negative impact. If the RPLT Act prohibits market rent reviews, some park operators may apply significant annual rent increases (for example, CPI plus five per cent) in long-stay agreements in order to cover the potential for unforeseen costs.
- Option B – Positive impact. Will remove the pressure on park operators to increase rents annually to guard against potential increased costs. This will result in potentially smaller rent increases for long-stay tenants in general. Allows long-stay tenants to negotiate with park operators around the need for, and amount, of a potential rent increase. In some instances, however, it may result in a rent increase that has not been budgeted for by tenants.

Government:

- Option A – Minimal impact. Continuation of the status quo.
- Option B – Minimal impact. There may be some increased applications to SAT from operators who cannot achieve the consent of their long-stay tenants to a proposed rent increase. This would be somewhat offset by an anticipated decrease in applications from long-stay tenants in relation to claims of excessive rent increases as a consequence of proposed amendments that will require park operators to stipulate a method of rent review in a fixed term agreement with a renter and the proposed prohibition of market based rent reviews.

Assessment against the objective

- Option A – May not allow for sufficient flexibility for park operators to recover unforeseen costs if market rent reviews are prohibited under the RPLT Act.
- Option B – Provides flexibility for park operators to recover genuine unforeseen expenses in consultation and negotiation with tenants. Reduces the need for park operators to increase rents to guard against the possibility of unforeseen costs.

15 FEES AND CHARGES

Apart from rent and a security bond, the RPLT Act provides for the charging of various fees by park operators, including:

- an option fee²⁵⁹;
- rates, taxes and charges – these costs are generally the responsibility of the park operator, unless the agreement provides otherwise²⁶⁰;
- the cost of preparing a long-stay agreement – these costs are generally the responsibility of the park operator, unless the agreement provides otherwise²⁶¹; and
- commissions associated with the selling of a home on-site²⁶².

The RPLT Regulations²⁶³ also set out a number of fees and charges which a park operator can require a tenant to pay in addition to rent and a security bond. These include fees for visitors, utilities (if separately metered), internet, gardening services, storage services, additional parking spaces, servicing of an air-conditioning unit used by the tenant, cleaning of gutters and the park operator screening the suitability of prospective purchasers of a home owned by a tenant (other than when acting as a selling agent).

The RPLT Act provides that before a park operator enters into a long-stay agreement with a person 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 operator²⁶⁴. Either party to a long-stay agreement can also apply to the SAT to settle a dispute in connection with any payment to be made under a long-stay agreement²⁶⁵.

15.1 COST RECOVERY IN RELATION TO FEES

Issue

Generally, in relation to long-stay agreements the rent will cover most of the costs of running a park, with the park operator permitted to charge additional fees for certain specified items (see above).

It has been suggested that, as a general principle, fees for utility consumption and services provided should be limited to the amount required in order to recover the actual costs incurred by a park operator in relation to the particular item or service that is being charged for. This principle is applied in other tenancy legislation in Western Australia, for example, the Residential Tenancies Act was recently amended to provide that a tenant could only be charged for a utility by reference to the actual amount of utility consumed²⁶⁶.

The costs sought to be recovered by the park operator should also only be recovered once – there should be no double dipping by charging for the same item or service in different ways.

²⁵⁹ Section 12

²⁶⁰ Section 32 and Schedule 1 – clause 15

²⁶¹ Section 14

²⁶² Section 57

²⁶³ Regulation 10 and Schedule 8

²⁶⁴ Section 11(1)(c)

²⁶⁵ Section 62(2)(b)

²⁶⁶ Section 49A, *Residential Tenancies Act 1987*

While Schedule 8 of the RPLT Regulations prescribes the fees and charges that may be charged to a long-stay tenant by a park operator, there is no provision in the RPLT Act indicating that they should be charged in accordance with the general principle of cost recovery. The issue in question is therefore whether there is a need to provide for cost recovery in the legislation and, if so, whether this will unduly affect the park operator's ability to maintain a financially viable business.

In addition to rent, an exception to the cost recovery principle is the exit fee, which can be expressed as a percentage or as a set fee. Exit fees are discussed in greater detail at part 15.5.

Objective

To ensure tenants are not charged unreasonably inflated fees and charges in addition to rent while maintaining the financial viability of the park operator's business.

Recommendation

Option B – (with amendments) amend the RPLT Act to provide that fees for items other than rent should be charged on a cost recovery basis only and to give the SAT the jurisdiction to determine disputes in relation to such matters.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it successfully balances the interests of tenants and park operators in relation to fees and charges.

In response to the report, five respondents supported the proposal²⁶⁷ while three opposed it²⁶⁸. CIAWA provided qualified support to Option B on the basis that administrative costs, such as the cost burden of collecting such charges, are considered recoverable.

A number of park operators also expressed concern at the increased cost burden on them in screening tenants. Currently, the RPLT Regulations cap the amount that can be charged for screening tenants at \$200. However, park operators state that this amount is not sufficient to cover the time involved.

Option B remains the preferred option. However, it will be clarified that the cost recovery principle is aimed at those costs that are separately passed on to tenants where little, if any, value is added by the operator, for example, gardening fees and utilities costs. These costs should reflect the actual cost incurred by the operator and should not be unreasonably inflated.

In response to stakeholder feedback to the report it is proposed that as part of the implementation of Option B, the \$200 cap on screening fees contained in the RPLT Regulations be removed and replaced with a 'reasonable' amount requirement. Disputes would be subject to review by the SAT.

²⁶⁷ Wolff, Cockerham, Engwirda, Shelter WA and PHOA

²⁶⁸ GG Corp, NLV and confidential operator

Background

C-RIS Proposals:

Option A – Status quo

The RPLT Regulations continue to prescribe what fees and charges can be passed on to a long-stay tenant by the park operator.

Option B – Amend the RPLT Act to allow for cost recovery only

Amend the RPLT Act to specifically provide that fees for items other than rent should be charged on a cost recovery basis only and to give the SAT the jurisdiction to determine disputes in relation to such matters.

Stakeholder views

	Written submissions	
	Option A	Option B
Tenants	-	1
Park operators	4	1
Other	1	3
TOTAL	5 (50%)	5 (50%)

This question was not addressed in the survey. However, a total of 10 respondents who provided written submissions to the review did address this issue.

Stakeholder opinion was evenly divided on whether the RPLT Act should be amended to mandate only cost recovery in relation to fees and charges other than rent and exit fees that are passed on to the tenant by the park operator.

Those in favour of Option B²⁶⁹ saw improved transparency of fees and charges as a benefit of this option. Those opposed to any amendment²⁷⁰ considered the current regime to operate effectively and in some ways to already be too tightly constrained²⁷¹. One respondent²⁷² stated that it would be difficult to calculate the actual cost of some services provided and that if this change were imposed, many park operators would cease providing the additional services that add to the enjoyment and amenity of a residential park. This would be to the detriment of long-stay tenants.

²⁶⁹ Goldfields CLC, Consumer Advisory Committee

²⁷⁰ NLV, Carine Gardens, Aspen, Confidential operator

²⁷¹ NLV

²⁷² Confidential operator

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">Provides park operators with continued flexibility to charge for a range of services on a commercially viable basis.	<ul style="list-style-type: none">Without regulatory oversight, potentially unfair additional costs and charges could be charged.
Option B – Amend the RPLT Act to allow for cost recovery only in respect of fees and charges	<ul style="list-style-type: none">Provides park operators with continued flexibility to charge for a range of services and recover the costs of those services.Limiting fees and charges to cost recovery would ensure that tenants are not unfairly burdened with additional fees and charges as a means of increasing the profit margin of the residential park.	<ul style="list-style-type: none">Some additional administrative burden and compliance costs on park operators in calculating the actual cost of providing some services and in attending the SAT where there is a dispute in respect of fees and charges.There may be an increased workload for the SAT.Compliance costs for government in enforcing new requirements.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo. Park operators can continue to charge prescribed fees at the rate agreed upon in the long-stay agreement or as amended from time to time.
- Option B – Minimal impact. Park operators will continue to be able to charge prescribed fees at a rate that is commercially viable. Park operators will be required to cost the services provided and charged to tenants on a cost recovery basis only. However, it is expected that most park operators will already know the cost of providing each of these services so as to ensure they do not operate at a loss.

Home owners:

- Option A – Negative impact. Although home owners and park operators can agree on fees and charges when entering into a long-stay agreement, these fees and charges are generally fixed by the park operator and are not usually subject to negotiation. The fees and charges are also subject to change throughout the tenancy. The cost of relocating a home is generally prohibitive, and because many home owners are on fixed incomes, home owners are particularly vulnerable to potential price gouging on these fees and charges.
- Option B – Positive impact. Home owners will continue to pay for the services they receive, however the fees and charges will be set at a rate of cost recovery and home owners will be protected from potential price gouging. The provision of services and facilities in the park should not be diminished as park operators will be able to recover actual costs incurred.

Renters:

- Option A - Negative impact. Although renters and park operators can agree on fees and charges when entering into a long-stay agreement, these fees and charges are generally fixed by the park operator and not usually subject to negotiation. The fees and charges are also subject to change throughout the tenancy. As many renters are on fixed incomes they are vulnerable if fees and charges are set at unreasonably high rates.
- Option B – Positive impact. Renters will continue to pay for the services they receive, however the fees and charges will be set at a rate of cost recovery and renters will be protected from potential price gouging. By allowing for cost recovery, the provision of services and facilities in the park should not be diminished as operators will be able to recover actual costs incurred.

Government:

- Option A – Minimal impact. The Department would likely continue to receive enquiries and complaints from long-stay tenants regarding what is perceived to be an excessive increase in the fees and charges payable at their park.
- Option B – Minimal impact. There may be an increase in applications to the SAT as the SAT will be given jurisdiction to determine if the fees and charges payable under a long-stay agreement are inconsistent with the cost recovery principle.

Assessment against the objective

- Option A – Fails to ensure tenants are not charged unreasonably inflated fees and charges in addition to rent which has been reported by tenants. Offers no regulation of this aspect of a long-stay tenancy. However, does not impact on park operator's ability to maintain financially viable business.
- Option B – Ensures tenants are not charged unreasonably inflated fees and charges by requiring that fees and charges are only calculated on a cost recovery basis. Also ensures that park operators maintain a financially viable business by allowing for cost recovery in the setting of fees and charges.

15.2 COSTS OF PREPARING A LONG-STAY TENANCY AGREEMENT

Issue

Under the RPLT Act the costs of preparing a long-stay agreement are generally the responsibility of the park operator, unless the agreement provides otherwise²⁷³. The equivalent provision in the Residential Tenancies Act provides that these costs are to be borne by the landlord and this requirement cannot be varied by agreement. Likewise, the *Commercial Tenancy (Retail Shops) Agreements Act 1985*²⁷⁴ prohibits the landlord from recovering the cost of the preparation of the lease agreement from the tenant.

²⁷³ Section 14

²⁷⁴ Section 14B

Objective

To ensure that the costs of preparing a long-stay agreement are allocated fairly.

Recommendation

Option B – that the park operator bears the cost of preparing the long-stay agreement and that this requirement cannot be varied by the long-stay agreement.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report.

Most park operators use their own standard form of agreement that, once drafted, can be used multiple times. While there is an initial outlay for park operators, the cost is minimal when spread across all long-stay agreements.

All respondents to the report supported this option.

Background

C-RIS Proposals:

Option A – Status quo

The RPLT continues to provide for a long-stay agreement to specify that the long-stay tenant must pay the cost of preparing the long-stay tenancy agreement.

Option B – Park operator to bear the cost of preparing the long-stay tenancy agreement

Amend the RPLT Act to provide that the park operator must bear the costs of preparing a long-stay agreement and that this requirement cannot be varied by the long-stay agreement.

Stakeholder views

	Survey responses		Written submissions	
	Option A	Option B	Option A	Option B
Tenants	7	48	-	1
Park operators	5	1	2	3
Other	-	-	-	8
TOTAL	12 (20%)	49 (80%)	2 (14%)	12 (86%)

A clear majority of tenant and other respondents supported Option B, in that the RPLT Act should be amended to require the park operator to pay for the preparation of the lease and to prohibit this charge from being passed on to the long-stay tenant. Operators were divided on this issue.

In supporting Option B, CIAWA and the Consumer Advisory Committee acknowledged that this change would ensure the RPLT Act is consistent with the Residential Tenancies Act and the Commercial Tenancies Act. PHOA and a number of tenant respondents to the online survey noted that park operators use their own standardised agreements. They claim that after incurring an initial cost of having a template agreement drafted, the park operator simply reuses the template for each new long-stay tenant.

The RPLT Act does not currently limit the lease preparation costs that are recoverable to actual cost recovery. It is therefore possible that a home owner could be required to pay an amount that does not reflect the actual costs incurred in preparing the long-stay agreement. In expressing its support for the change, PHOA noted that one of its members had been charged \$500 for processing the long-stay agreement.

In arguing against this proposal, NLV stated that under the RPLT Act park operators bear the burden of providing disclosure information to residents and explaining the contents of the agreement with the prospective long-stay tenant. NLV argued that park operators should be able to recover the cost of discharging this burden from the tenants who are the beneficiaries of the obligation.

In contrast to this argument, most of the tenant respondents to the survey argued that it is the park operator who benefits from the drafting of the lease agreement as they dictate the terms of the agreement and prospective long-stay tenants are often unable to make changes. Therefore, it is the park operator who should pay for the preparation of the agreement.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> Park operators will continue to be able to recover costs associated with the preparation of a long-stay agreement from a long-stay tenant if they choose to do so. 	<ul style="list-style-type: none"> Inconsistent with the Residential Tenancies Act and Commercial Tenancies Act. Tenants required to pay the costs of the preparation of a long-stay agreement.
Option B – Park operator to bear the costs of preparing the long-stay agreement	<ul style="list-style-type: none"> Consistent with the Residential Tenancies Act and Commercial Tenancies Act. 	<ul style="list-style-type: none"> Park operators will no longer be able to recover the cost of preparing a long-stay agreement from a long-stay tenant.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo. The RPLT Act will continue to allow park operators to elect to recover the cost of preparing a long-stay agreement from tenants.

- Option B – Minimal impact. The cost of preparing a long-stay tenancy agreement is a cost associated with the income derived from an investment and should therefore be borne by the park operator. Most park operators use their own standard form of agreement that, once drafted, can be used multiple times. While there is an initial outlay, the overall cost is minimal when spread across all long-stay agreements. The Department also makes available on its website a template agreement free of charge that is available for park operators to use.

Home owners and renters:

- Option A – Negative impact. Given the weaker negotiating position of long-stay tenants, it is unlikely that the prospective long-stay tenant would be in a position to influence the park operator's decision of whether to recover the costs of preparing a long-stay agreement from the tenant. Further, as the RPLT Act does not currently limit the lease preparation costs that are recoverable to actual cost recovery, it is possible that a tenant could be required to pay an amount that does not reflect the actual costs incurred in preparing the long-stay agreement.
- Option B – Positive impact. Tenants would not be directly subject to the financial burden of having to reimburse the park operator for the costs of preparing a long-stay agreement.

Government:

- Option A – Minimal impact. The SAT would continue to be able to settle a dispute in connection with any payment to be made under a long-stay agreement.
- Option B – Positive impact. The SAT would no longer be required to settle disputes between the parties to a long-stay agreement regarding the recovery of costs in preparing a long-stay agreement.

Assessment against the objective

- Option A – Fails to ensure the costs of preparing a long-stay agreement are borne by the party that derives income from the business. Most park operators use their own standard form of agreement, and a prospective long-stay tenant is often unable to negotiate changes to its terms.
- Option B – Ensures the costs of preparing a long-stay agreement are borne by the party that derives income from the business.

15.3 VISITORS' FEES

Issue

Currently, the RPLT Regulations permit a park operator to charge a tenant a visitor fee for overnight guests²⁷⁵. The legislation permits the charging of visitors' fees, but does not regulate factors such as the amount payable and the circumstances in which they may be charged. A similar approach is applied in other jurisdictions.

The SAT has the jurisdiction to consider a dispute in relation to visitors' fees.

²⁷⁵ Regulation 10 and Schedule 8, Item 1

Disputes often arise about the charging of visitors' fees. In responding to the discussion paper and the C-RIS, tenants objected to being required to pay for visitors despite owning a home on the park that is self-contained, and also charges being applied to carers and family members, or short visits. There have been calls for greater regulation in relation to this area. From the comments received to-date, there appears to be no industry standard about what constitutes a visitor or for setting visitors' fees.

Objective

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

Recommendation

Option A – (status quo) no change to the charging of visitors' fees; however the amount of visitors' fee must be reasonable and consistent with principle of cost recovery. A carer's visit will be exempt from the payment of visitors' fees.

Statutory Review Report

Option A was the preferred option in the Statutory Review Report.

In implementing Option A, the report proposed to introduce a requirement that the amount of the visitors' fee must be reasonable and be consistent with the principle of cost recovery.

In their responses to the report, stakeholders were evenly split. Six respondents supported the status quo²⁷⁶, and six respondents opposed it²⁷⁷, some expressing a preference instead for Options B or C. A number of park operator responses expressed concern that it may be difficult to quantify the cost of using facilities.

Option A remains the preferred option. However, it will be clarified that the 'consistent with cost recovery' requirement is aimed at those costs that are separately passed on to tenants where little, if any, value is added by the operator (eg. gardening fees and utilities costs). These costs should reflect, as closely as is possible, the actual cost incurred by the operator and should not be unreasonably inflated.

With regards to visitors' fees for carers, as noted in the report, the Department will monitor the impact of the proposed changes to ensure that park operators are not disadvantaged.

²⁷⁶ Cockerham, confidential operator, NLV, Fourmi Pty Ltd, Discovery Parks and CIAWA

²⁷⁷ Wolff, Engwirda, Izzard, Ransom, Shelter WA and PHOA

Background

C-RIS Proposals:

Option A – Status quo

A park operator may require a tenant to pay a visitor fee for overnight guests. Application depends on each individual lease agreement. The circumstances when visitors' fees are charged must be set out in the disclosure material provided prior to signing the lease agreement. The lease agreement must specify the amount payable.

The SAT may make a determination in relation to a dispute about visitors' fees.

Option B – Visitors' fees for use of shared facilities

A park operator may require a tenant to pay a visitor fee for overnight guests, but only where shared facilities are used by the visitors.

This option provides operators with the continued flexibility to recoup both the actual costs of using shared facilities as well as the costs involved in maintaining and upgrading them. It also ensures that only those visitors who use shared facilities contribute to their cost.

Option C – Visitors' fees only after stay exceeds minimum period

A park operator may require a tenant to pay a visitor fee for overnight guests, but only after the visitor's stay exceeds a minimum period (for example three weeks). Short stays by family, friends and/or carers will not attract a visitor fee until their stay exceeds the minimum period. This option recognises that there may be increased costs incurred by the operator where a tenant has visitors for an extended period.

Option D – Prohibit visitor fees

The RPLT Act would be amended to prohibit the charging of visitors' fees.

Stakeholder views

	Survey responses				Written submissions			
	Option A	Option B	Option C	Option D	Option A	Option B	Option C	Option D
Tenants	7	10	18	14	-	-	1	-
Park operators	6	-	-	-	2	-	1	-
Other	-	-	-	-	1	1	3	1
TOTAL	13 (24%)	10 (18%)	18 (33%)	14 (25%)	3 (30%)	1 (10%)	5 (50%)	1 (10%)

Tenant respondents were divided in their views, with the biggest group supporting Option C, although there was also significant support for Option D. A number of tenants questioned the charging of visitors' fees where a guest does not use shared facilities and the long-stay tenant is living in fully self-contained accommodation. One tenant commented that if the charging of visitors' fees was prohibited in these circumstances, this would allow for non-regular visits by family and also cover emergency and unforeseen reasons for accommodating guests. A number of tenant survey responses acknowledged that the payment of visitors' fees may be justified where their guest uses shared facilities or they stay for an extended period. In this regard, a number of tenants suggested that an extended period should constitute a stay of weeks rather than days.

All of the park operator respondents to the survey supported Option A.

In its written submission PHOA supported Option D for park home and lifestyle village residents. Similar to a number of tenant responses to the survey, PHOA does not support visitors' fees being charged where the long-stay tenant is living in fully self-contained accommodation. However, for tenants residing in mixed-use parks with shared facilities, PHOA supports Option B provided the visitors' fees are reasonable and are fully disclosed in the disclosure statement.

In relation to the written submissions, a number of operators, including NLV, expressed concern with how Options B and C could be monitored on an ongoing basis. One park operator questioned how they would know when a visitor uses a shared facility.

One park operator²⁷⁸ commented that operators need an ability to control the number of people on the park and the number of people using its facilities, and in this regard residential parks are quite different to most types of residential tenancies as the landlord in those cases would not have always expended millions of dollars on shared facilities.

In its written submission, the Consumer Advisory Committee supported Option A, provided that the fees are clearly documented in the long-stay agreement before the commencement of the tenancy.

A number of tenants expressed satisfaction with how visitors' fees are currently applied in their park, particularly where the visitors' fee and the method of calculation is disclosed prior to occupancy. One tenant²⁷⁹ noted their park charges a flat weekly visitors' fee where a guest stays for longer than a fortnight. However, no-one has been charged for visits exceeding the fortnight since guests are usually relatives from afar and the rule has not been abused. In their submission, the tenant acknowledged the danger of 'permanent residence by stealth' if no rules are put in place regarding visitor stays.

²⁷⁸ Confidential operator

²⁷⁹ Watt

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Park operators retain flexibility to select approach to visitors' fees which best secures overall park viability. • Operators can determine amount of visitors' fees based on extent of shared facilities provided and number of visitors. • The SAT may make a determination in relation to a dispute about visitors' fees. 	<ul style="list-style-type: none"> • Home owners in self-contained dwellings are paying for a service (such as use of ablution blocks) that their visitors may not use. • Tenants who require the assistance of a carer may be charged for them to visit at their home. • Tenants in mixed-use parks may be subject to fluctuations in the rate of visitors' fees payable, especially during peak tourist periods.
Option B – Visitor fees for use of shared facilities	<ul style="list-style-type: none"> • Provides operators with the continued flexibility to recoup the actual costs of using shared facilities. • Ensures that only those visitors who use shared facilities contribute to their cost. Consistent with the accepted user-pays principle. 	<ul style="list-style-type: none"> • The park operator may incur additional costs as a result of visitor access to the park even if the visitors do not use shared facilities (e.g. insurance). • There may be practical difficulties (and associated costs) in monitoring who is using shared facilities and which tenant they are visiting, this could also intrude on a tenant's privacy. • Tenants may still be subject to fluctuation in the amount of visitors' fees charged e.g. during peak periods.

	Potential benefits	Potential disadvantages
Option C - Visitor fees only after stay exceeds minimum period	<ul style="list-style-type: none"> • Tenants do not have to pay for family, friends or carers visiting them at their home for short periods. • Allows the operator to recover costs incurred where a tenant has visitors for an extended period (such as insurances) regardless of whether shared facilities are used or not. 	<ul style="list-style-type: none"> • Limits the flexibility of park operators to select approach to visitors' fees which best secures overall park viability. • Not being able to charge fees for stays within the minimum period may have a negative financial impact on operators who might have to increase the amount of visitors' fees payable in order to recover costs. • In order to keep costs to a minimum during those periods when visitors' fees cannot be charged, operators may: <ul style="list-style-type: none"> – limit visitor access to park facilities such as pool, BBQ, games room (particularly during peak times); – use park rules to try to limit who may visit a tenant; and – increase rents overall. • Home owners in self-contained dwellings are paying for a service (such as use of ablution blocks) that their visitors may not use. • There may be difficulties in determining what period is appropriate as a minimum stay and how it should be calculated – e.g. per visit or combined stays over a given period?
Option D – Prohibit visitors fees	<ul style="list-style-type: none"> • No financial impact if visitors stay overnight. 	<ul style="list-style-type: none"> • May have a negative financial impact on park operators. • Could result in an increase in rent.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo. The RPLT Act will continue to allow park operators to elect to recover visitors' fees from long-stay tenants as is appropriate for their particular park.
- Option B – Negative impact. The administrative burden imposed on park operators would be substantial and likely to outweigh the benefit. It would be difficult for operators to police the application of the requirements and has the potential for the park operator's behaviour to impact on tenants' privacy.

Further, this option does not recognise that extra people in the park may result in additional safety issues or other impacts on park infrastructure, which are not directly connected to the use of shared facilities. There may be increased costs incurred by the operator, such as insurances, regardless of whether shared facilities are used by visitors or not.

- Option C – Negative impact. The administrative burden imposed on park operators would be substantial and likely to outweigh the benefit. It would be difficult for operators to police the application of the requirements and has the potential for the operator's behaviour to impact on tenants' privacy. Further, this option does not recognise that extra people in the park may result in additional safety issues or other impacts on park infrastructure, which are not directly connected to the length of stay. There may be increased costs incurred by the operator, such as insurances, regardless of length of stay by visitors.
- Option D – Negative impact. Park operators may not be able to maintain and upgrade shared facilities which may impact on the profitability of the park and its future viability.

Home owners and renters:

- Option A – Minimal impact. A number of tenants expressed satisfaction with how visitors' fees are currently applied in their park, particularly where the visitors' fee and the method of calculation is disclosed prior to occupancy.
- Option B – Positive impact. Tenants living in self-contained accommodation whose visitors do not access shared facilities would not be required to pay visitors' fees.
- Option C – Minimal impact. A number of tenant and park operators reported that this approach is already used in their park. However, if the minimum period was reduced to a period of days rather than weeks (as is reported as applying in most parks at present) the option could have a negative impact on tenants as they would be required to pay visitors' fees for stays which do not currently attract a fee. This option would also result in renters in a residential park being treated differently to those who have entered into a Residential Tenancies Act tenancy where visitors' fees are prohibited.
- Option D – Negative Impact. While tenants would not be charged visitors' fees, it is likely that the park operator would increase rent in order to cover the costs of maintaining shared facilities. This could result in the artificial inflation of rent charges for all tenants which would unfairly impact those tenants who do not have visitors or those whose visitors do not use any shared facilities and yet would have to bear this increased cost.

Government:

- Option A – Minimal impact. The SAT would continue to have jurisdiction to make a determination in relation to a dispute about visitors' fees.
- Option B – Negative impact. This option is likely to result in an increased number of disputes being referred to the SAT which will place an increased burden on its operations.
- Option C – Negative impact. This option is likely to result in an increased number of disputes being referred to the SAT which will place an increased burden on its operations.
- Option D – Negative impact. An increase in rent/site fees to cover the costs of operating and maintaining shared facilities may result in some park residents being forced to leave their park which could place increased pressure on government housing options.

Assessment against the objective

- Option A –Provides a means by which park operators are able to recoup costs involved in maintaining and upgrading shared facilities, however the RPLT Act does not require those costs to be charged on a cost recovery basis only. Tenants in self-contained accommodation whose visitors do not access the shared facilities are being charged for a service they do not use.
- Option B –Would impose a significant administrative burden on park operators that is likely to outweigh the benefit of charging visitors' fees that reflect the actual cost in providing those services to visitors. The option could also negatively impact on tenants' privacy.
- Option C –Would impose a significant administrative burden on park operators that is likely to outweigh the benefit of charging visitors' fees that reflect the actual cost in providing those services to visitors. The option could also negatively impact on tenants' privacy.
- Option D –Prohibiting the charging of visitors' fees is likely to impact on the long-term viability of the park and may adversely affect all tenants by resulting in the artificial inflation of rent to compensate for loss of revenue from visitors' fees.

Carer Visits

The C-RIS survey also asked respondents to indicate whether they are required to pay visitors' fees for the visits of their carer. Of the 34 responses to this question, 29 responses (85 per cent) indicated that they are not required to pay visitors' fees for their carers. Only five respondents (15 per cent) indicated they were required to pay visitors' fees for their carers.

The C-RIS survey also asked whether tenants should be exempt from the payment of visitors' fees in relation to visits from carers and health professionals required as a medical necessity. The responses are summarised below:

	Survey responses		Written submissions		
	Carers exempt	No exemption	Carers exempt	No exemption	Exemption for limited period
Tenants	44	48	1	-	1
Park operators	2	1	-	-	-
Other	-	-	-	-	1
TOTAL	12 (20%)	49 (80%)	1 (33%)	-	2 (67%)

A number of survey respondents indicated that an exemption should be applied where a tenant's health is extreme, the visits are of a short duration, and the carer does not utilise shared facilities.

A number of tenants and park operators supported the charging of visitors' fees for carers only where the carer's stay exceeds a certain period.

In its written submission, PHOA supported an exemption, commenting that to impose a fee on carer visits could lead to a tenant refusing help that could result in illness or physical harm.

While acknowledging residential parks are not aged care facilities, and that they are marketed as a housing option for people capable of living independently, the Consumer Advisory Committee recommended that an exemption from visitors' fees should apply in the following circumstances:

- where temporary live-in or overnight unpaid carers (family or friends) are needed to assist a tenant (up to a maximum period); or
- where there is a recognised medical need for carers, supported by a written authorisation from a doctor certifying that the tenant needs a carer either full-time or for a specified part-time period for rehabilitation or recovery after a period of illness or surgery; or
- carers of tenants in self-contained accommodation who do not use the shared facilities available to visitors.

The Consumer Advisory Committee's comments are reflected in some of the tenant feedback to the survey, where respondents supported an exemption if the carer's visit is of a short duration and they do not use shared facilities. A number of tenants and park operators commented that where a carer's visit is for an extended period, in that the carer is effectively living in the park, then a fee should be charged.

In its submission, Riverside Gardens noted that the charging of visitors' fees for carers was unlikely to occur in its park as people are allowed two residents per home without the necessity to pay fees, and in virtually all cases it is a single person requiring the services of a duly authorised carer.

In its submission, the Goldfields CLC submitted that as it is probable that tenants who require regular care/medical visits would be either in receipt of an aged pension or a disability pension, it should be incumbent upon them to check with Centrelink in the first instance to see if there are special funding allowances available to cover visitors' fees.

While it is acknowledged that there is a risk that tenants may attempt to use a carer's visit exemption to circumvent the payment of visitors' fees and/or the maximum number of residents per property specified in the lease, it is considered that the risk of this occurring is low, especially since 85 per cent of survey respondents have advised they are not charged visitors' fees for carers.

15.4 ENTRY FEES

Issue

Sometimes tenants in lifestyle villages and park home parks, who have lengthy leases, may be required to pay certain fees or charges when they enter or exit a residential park.

In Western Australia, the RPLT Act provides that a park operator must not require or receive from a tenant, or prospective tenant, any payment of money for or in relation to entering into, renewing, extending or continuing the lease agreement except money for rent and a security bond²⁸⁰.

The prohibition on the charging of entry fees is one of the features that make residential parks distinguishable from retirement villages. In the case of retirement villages, the initial entry price is called a 'premium' and may be the purchase price of:

- a freehold property;

²⁸⁰ RPLT Act – section 12(1)

- security or other asset;
- an interest free loan; or
- the payment of an amount in exchange for a lease or for a licence to occupy premises in the retirement village.

No initial entry price is payable in the case of residential park leases, so that the only upfront cost for home owners relates to the cost of acquiring the park home itself. No payment is made for the land on which it sits, as the land is leased from the park operator.

It is not intended to change the RPLT Act to remove these distinguishing features by permitting the charging of entry fees, because to do so risks undermining residential parks as an alternative model of housing for the Western Australian community. In the retirement villages context, the entry fee/premium imposes on operators a number of obligations in order to justify the charge.

Objective

To ensure that residential parks continue as an alternative model of housing for the community in Western Australia.

Recommendation

That the status quo be maintained, with the current prohibition on the charging of entry fees to continue.

Statutory Review Report

The continuation of the status quo was the preferred option in the Statutory Review Report.

The majority of stakeholder responses to the report supported the status quo²⁸¹, although two park operators opposed the prohibition on entry fees²⁸².

Background

The survey did not include a question on entry fees; however the written submissions of a number of respondents did address the issue. In their submissions, CIAWA, Aspen Parks and another park operator²⁸³ support the continued prohibition on the charging of entry fees. While expressing a preference for entry fees to be permitted, Riverside Gardens supported the prohibition on the charging of entry fees provided that exit fees would be permitted.

The Consumer Advisory Committee's submission was that no change should be made to the prohibition on the charging of an entry fee in residential parks. To do so risks the future of the residential parks model, which is based on offering a more affordable (but less secure) housing option with lower barriers to taking occupancy.

²⁸¹ Wolff, Cockerham, Engwirda, NLV, Fourmi Pty Ltd and PHOA

²⁸² GG Corp and confidential operator

²⁸³ Confidential operator

15.5 EXIT FEES

Issue

While the RPLT Act prohibits the charging of entry fees, it does not prohibit the charging of fees when a tenant leaves a residential park. Exit fees and sharing agreements (referred to as shared equity/capital gain sharing arrangements in the C-RIS) are not currently regulated by the RPLT Act.

It appears that these types of fees and arrangements are becoming more prevalent in Western Australia. Stakeholder feedback to the C-RIS suggests that while the terms used, and the particulars of these arrangements may differ between parks, they generally involve:

- an arrangement between the park operator and a home owner for the deferral of rent to the park operator which are payable if the home is sold or removed from the site; or
- a loan arrangement between the park operator and a home owner whereby the cost of any park home is reduced in return for the operator receiving either a specified share of the capital gain in respect of the home, or a specified amount of the total sale price from the proceeds of sale, when the home is sold; or
- the payment of a specified exit fee to the park operator if the home is sold or removed from the site.

Proponents of these arrangements argue they ensure the ongoing maintenance of the park (by charging all home owners a specified amount), and help to keep rents as low as possible (by offering home owners the opportunity to pay a reduced rent or defer rent increases until such time as they sell their park home). In this regard, they are particularly attractive to prospective residents who cannot afford the full purchase price of a park home, or who are on a fixed weekly income and cannot absorb continual increases in the weekly rent.

These arrangements are different to those agreements that are entered into where the park operator acts as the selling agent on sale of the park home. The RPLT Act provides that if a park operator acts as a selling agent, the park operator is entitled to be paid a reasonable commission by the long-stay tenant when a home is sold. Sales commissions are discussed separately at part 17.7 of this paper.

Objective

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

Recommendation

Option B – amend the RPLT Act to regulate exit fees and shared equity agreements.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report.

The report noted that if required, the Regulations would prescribe what information must be included in the Disclosure Statement regarding the sharing agreement and/or exit fee.

As a result of stakeholder feedback from the C-RIS, it was considered desirable to provide a cooling-off period in the disclosure statement to allow a prospective tenant time to consider the sharing agreement and/or exit fee material further before they commence living in the park.

It was also considered desirable to stipulate in the legislation that in instances where a long-stay agreement is to be entered into with an existing home owner, or where the seller is not the operator of the residential park in which the park home is located, a park operator would be prohibited from only offering a sharing arrangement. The park operator would be required to also offer a rent only long-stay agreement that does not include a sharing arrangement so that tenants are not forced to enter into sharing arrangements.²⁸⁴

In order to clarify Option B to make it clear that the requirements extend to both sharing arrangements and exit fees, and to incorporate the proposed changes above, the report proposed that the RPLT Act be amended as follows:

- a park operator would be permitted to offer sharing agreements and charge exit fees, however there must be full transparency in relation to the terms of those arrangements which must be fully disclosed to the prospective tenant prior to their occupation;
- the Disclosure Statement must include the basis upon which the sharing agreement and/or exit fee has been calculated. The park operator will also be required to provide worked examples that provide the costs involved in realistic scenarios so that the tenant is able to understand how the sharing agreement and/or exit fee would operate in practice;
- a cooling-off period will apply to allow a prospective tenant time to consider the sharing agreement and/or exit fee material further before they commence living in the park;
- an exit fee will be the only fee recoverable from an outgoing long-stay tenant. No other fee, charge or premium will be recoverable, other than the recovery of costs incurred in providing services as a selling agent or those which directly relate to obligations under the long-stay agreement. Where a park operator charges an exit fee, they will be prohibited from also charging a sales commission fee (as these are typically linked to the value of the home and its location and not to services provided);
- in instances where a long-stay agreement is to be entered into with an existing home owner, or where the seller is not the operator of the residential park in which the park home is located, a park operator will be prohibited from only offering a sharing arrangement. In these circumstances, the park operator will be required to also offer a rent only long-stay agreement that does not include a sharing arrangement;
- the parties will be prohibited from excluding the provisions of the RPLT Act or agreeing to terms inconsistent with the RPLT Act in any agreement that provides for sharing or exit fees; and

²⁸⁴ This is the approach adopted in the New South Wales legislation (s.111 *Residential (Land Lease) Communities Act 2013*)

- where it can be shown that prior disclosure did not occur, or where the park operator attempts to charge an outgoing long-stay tenant other charges, fees or premiums in addition to the exit fee that do not directly relate to an obligation under the long-stay agreement, any such terms or amounts will be invalid.

A majority of stakeholder responses to the report supported Option B²⁸⁵. Three respondents opposed Option B²⁸⁶, for different reasons. PHOA and one tenant respondent were of the view that exit fees should not be permitted, whereas one operator was of the view that the status quo should be maintained.

Option B remains the preferred option.

In response to stakeholder feedback to the report requesting clarification around whether a standard form sharing arrangement/exit fee will be prescribed, the Department will clarify that no standard form or clauses will be introduced in relation to exit fees/sharing arrangements, although the parties will be prohibited from excluding the provisions of the RPLT Act or agreeing to terms inconsistent with the RPLT Act in any agreement that provides for sharing or exit fees.

Further, in response to stakeholder feedback to the report requesting further clarification regarding how exit fees/sharing arrangements will interact with sales commissions, it will also be clarified that an operator will not be prevented from charging for their expenses relating to the marketing and sales service a park operator provides if appointed the selling agent for the home, even where a sharing arrangement/exit fee is in place. However, an operator will not be able to charge a set fee or percentage of the sale price, which does not reflect work done in the sale of the home, in addition to an exit fee.

²⁸⁵ Wolff, Izzard, Cockerham, Fourmi Pty Ltd, Discovery Parks, Shelter WA and CIAWA

²⁸⁶ Engwirda, PHOA and confidential operator

Background

C-RIS Proposals:

Option A – Status quo

Exit fees and shared equity arrangements are not regulated by the RPLT Act.

Option B – Amend the RPLT Act to regulate shared equity agreements and the use of exit fees

Under this option the RPLT Act would be amended to provide that:

- The provisions of the RPLT Act will apply regardless of the method of purchasing the park home. The parties will be prohibited from excluding the provisions of the RPLT Act or agreeing to terms inconsistent with the RPLT Act in a shared equity agreement or park home purchase agreement.
- A park operator may charge an exit fee to an outgoing long-stay tenant upon the sale of the tenant's park home to either a third party or to the park operator as part of a buy-back arrangement.
- The amount of the exit fee is to be as agreed between the individual parties at the time of entry into the agreement.
- No other fee, charge or premium will be recoverable from an outgoing long-stay tenant in addition to the exit fee.
- As the exit fee will replace the need for a sales commission, new long-stay agreements will not be permitted to include sales commissions. However, it is proposed that where the park operator acts as the tenant's sale agent they will still be entitled to charge a fee for services rendered. This is discussed separately at part 17.7 of this paper.
- Where a park operator wishes to charge an exit fee, there must be transparency in relation to the exit fee (for example, how it is calculated and the justification for it being charged). The park operator will be required to provide a prospective tenant with the details of the exit fee in the Disclosure Statement. The Disclosure Statement must include the basis upon which the exit fee has been calculated. For example, it may be calculated as a percentage of the value of the sale price of the park home or it may be a fixed amount based on the length of occupancy of the long-stay tenant. The park operator will also be required to provide worked examples in the Disclosure Statement that provide costs involved in realistic scenarios so that the tenant is able to understand how the exit fee would operate in practice²⁸⁷.
- Where it can be shown that proper disclosure did not occur, or where the operator attempts to charge an outgoing tenant other charges, fees or premiums in addition to the exit fee, any such terms will be unenforceable.

²⁸⁷ These examples will need to have regard for the fact that the home is a depreciating asset in real terms.

Stakeholder views²⁸⁸

	Survey responses		Written submissions	
	Option A	Option B	Option A	Option B
Tenants	27	20	-	-
Park operators	1	3	2	1
Other	-	-	-	6
TOTAL	28 (55%)	23 (45%)	2 (22%)	7 (78%)

The C-RIS asked respondents whether they supported the proposal that park operators should be permitted to offer sharing agreements and charge exit fees. There was a mixed response for this proposal.

Reasons given for supporting the proposal from the surveys included that it would allow for park operators to discount the rent payable by the tenant and then recoup it upon the sale of the park home, and that it would assist in stopping park operators charging large sales commissions. While one respondent noted that allowing these arrangements would increase the park operator's capacity to offer affordable circumstances to clients, it would need to be open and transparent at the time of the original agreement i.e. before occupancy commences.²⁸⁹

The survey responses suggest that a number of respondents confuse an exit fee with the commission or sales fee that a park operator may charge when they act as the home owner's agent on sale. Those responses have therefore been considered in the section addressing sales commissions at part 17.7 of this paper. This demonstrates the confusion that exists around the charging of exit fees and the need to include clear requirements in the legislation.

Also, a number of survey respondents commented that it would not be fair for a park operator to charge them an exit fee as they had already been charged an entry fee²⁹⁰.

The written submissions in response to the C-RIS also reflected a mixed response for this proposal.

NLV supports the continuation of the status quo provided that adequate disclosure is given. NLV noted that exit fees and sharing agreements recognise that tenants are deriving value from the land provided by the operator, and that such arrangements also provide a means of subsidising rents (and hence facilitating access to housing), which are generally not at a level of cost recovery for operators of lifestyle villages. NLV commented that some clients would be unable to move in at all without the sharing agreement option.

²⁸⁸ The table of stakeholder views represents the closest approximation of views to the options presented in the C-RIS as the questions answered by the respondents did not fully align with Options A and B

²⁸⁹ Survey response

²⁹⁰ Entry fees have been prohibited since the commencement of the RPLT Act. It should be noted that in relation to entry fees, the Department has commenced action against a park operator for breaching the RPLT Act by charging an entry fee

In supporting sharing agreements and exit fees, Riverside Gardens noted that lifestyle villages are generally set up on a financial plan of keeping rents as low as possible to allow for the day-to-day running of the village, but that the substantial cost of maintaining various facilities (e.g. indoor heated pools, golf putting green; caravan and boat storage areas; security alarm systems; village roads) would always have to be covered by a fee other than rent. If the rent charged was to take into account all of these costs, it would be cost prohibitive. In its view, exit fees protect both the investments of home-owners and park operators, and are an investment in the future of the village.

Another park operator²⁹¹ also supported the use of exit fees. This park operator commented that due to the complexity and diversity of methods for calculating an exit fee, it would be best regulated by summarising the effect of the exit fee in the disclosure statement and ensuring that a prominent statement is included in the disclosure statement informing a prospective tenant they should obtain independent legal advice. This operator did not favour additional regulatory action on the basis that this would then become too onerous for park operators to comply with and the sector could possibly lose the ability to provide homes at an affordable price.

PHOA opposes any form of sharing agreement being offered as it believes this has the potential to over-inflate the value of the home at the point of sale. PHOA has suggested that clear safeguards need to be incorporated into the RPLT Act, including a requirement that homes being offered under sharing agreements are subject to an independent valuation, before the use of sharing agreements is allowed to increase further.

Another home owner's submission noted that while the cost of buying a park home is comparable to a normal bricks and mortar home, unlike its more traditional counterpart, a park home is a depreciating asset. On this basis, the respondent suggested that a lower exit fee or a capped exit fee should apply, as when compared to a brick-built property there is no capital gain.

Some respondents also objected to park operators charging more than the exit fee amount that was agreed at the time of entering the long-stay agreement. They claim that their park operator has introduced an exit fee during the period of their long-stay agreement even though they were advised that none would be charged when they entered the park. The issue of unilateral changes to a long-stay agreement is addressed at part 7.4 of this paper. Other respondents report that when they have been presented with new long-stay agreements after their original agreement has expired, an exit fee has been included which was not included in the original agreement. In these circumstances their negotiating position is quite limited given that they are already living in the park and would incur the cost of the removal of their park home if they were not able to negotiate the fee's removal from the agreement.

PHOA prefers to have only one fee on exiting a park – either an exit fee or a sales fee (commission). PHOA believes that this amount should be included in the Disclosure Statement and stated in dollars and cents, not percentages.

Stakeholder feedback from the surveys and the written submissions suggests that the issue of exit fees and sharing agreements is of more relevance to lifestyle villages and park home parks, rather than mixed-use parks. The Department's own research and stakeholder feedback both suggest that the prevalence of these arrangements in mixed-use parks is rare.

²⁹¹ Confidential operator

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">• Provides flexibility to park operators to use exit fees and sharing arrangements as they see fit.• No change required by park operators to current revenue arrangements.	<ul style="list-style-type: none">• Potential for unfair application of exit fee provisions. Tenants could suffer significant financial loss.
Option B – Introduce restrictions in relation to exit fees and shared equity arrangements	<ul style="list-style-type: none">• Provides operators with the continued flexibility to use exit fees or sharing arrangements.• Ensures that adequate protections are in place for tenants.• Provides for greater transparency.• May mean that park homes are more affordable for some tenants (if less investment is required up-front).	<ul style="list-style-type: none">• Additional administrative burden on park operators.• Limits flexibility of park operators as would restrict the charging of other fees and charges in addition to the exit fee.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo. Park operators and tenants would continue to be free to negotiate sharing agreements and exit fees with no constraints on those arrangements being imposed, or regulatory oversight provided by, the RPLT Act.
- Option B – Negative impact. Could place an additional administrative burden on park operators as they would need to disclose the nature, method of calculation and worked examples of their proposed sharing agreement or exit fee before signing the long-stay agreement with the prospective tenant (if they do not already do so). May expose park operators to the possibility of having their sharing agreement, or elements of it, or exit fee unenforceable if proper disclosure did not take place. However, full disclosure prior to entering into the lease should ensure that tenants are aware of the consequences of the arrangements they are choosing to enter into and result in less disputes being taken to the SAT. May result in park operators having to alter some of their income options if they are not permitted under the RPLT Act.

Home owners:

- Option A – Negative impact. The continuation of the status quo is likely to have a negative impact on home owners as there would continue to be no consumer protections in the RPLT Act that would place parameters around the fees and charges that a tenant might be required to pay.

- Option B – Positive impact. Will improve rights of home-owners in relation to sharing agreements and exit fees. Full disclosure will enable easier comparison of park offerings and enable prospective tenants to shop around for the deal that best suits their needs.

Renters:

- Minimal impact. These options do not affect renters. Research and feedback suggests that sharing agreements and exit fees is of more relevance to lifestyle villages and park home parks, rather than mixed-use parks where most renters live.

Government:

- Option A – Minimal impact. Continuation of the status quo. However, possible negative impacts if unfair practices develop as these arrangements become more common and remain unregulated.
- Option B – Minimal impact. May result in applications to the SAT where there is a dispute between a long-stay tenant and park operator.

Assessment against the objective

- Option A – While flexibility is maintained to allow for innovation in the residential parks sector so that park operators are able to achieve a commercially viable return on their investment, the option fails to provide for fairness and a degree of certainty for those tenants who utilise sharing agreements and/or are charged exit fees.
- Option B – Provides for fairness and a degree of certainty for those tenants who utilise sharing agreements and/or are charged exit fees. While this option will place an additional administrative burden on park operators in complying with the disclosure requirements, this is not considered to be a significant impost on operators and the benefits outweigh the burden imposed.

15.6 PAYING FOR ELECTRICITY

Issue

The RPLT Act restricts the charges payable by long-stay tenants during a tenancy to rent, a security bond, an option fee, authorised charges and prescribed payments.

Regulation 10 and Schedule 8 of the RPLT Regulations prescribe these payments and include charges for electricity consumed by the tenant, if the tenant has a separate electricity meter²⁹². The CPCG Regulations²⁹³ requires that all long-stay sites have a separate meter to record the electricity, if any, supplied to that site.

Further, the standard lease agreements for home owners and renters, includes a table of fees and charges for services and utilities, such as electricity. The table provides for the cost of each service and utility to be specified, whether or not the charge is included in the rent, the frequency of the charge and how the charge is calculated.

²⁹² RPLT Regulations - Schedule 8, item 3

²⁹³ Schedule 7, item 37(2)

Objective

To ensure that:

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

Recommendation

Option A – (status quo) no amendments would be made to the current legislative framework, but support through increased community education will be undertaken.

Statutory Review Report

Option A was the preferred option in the Statutory Review Report.

It was also proposed that in addition, the proposed new disclosure statement would also highlight the fact that charges for electricity consumed by the tenant (if the tenant has a separate electricity meter) must be in accordance with the relevant electricity by-laws as exist from time to time. This will provide more certainty to long-stay tenants regarding the electricity charges they may incur and clarify that a meter reading fee must fall within the parameters set for supply charges.

All stakeholder responses to the report were in favour of retaining the status quo.

Background

Electricity prices are determined under electricity by-laws which set out the relevant tariffs (the price of energy under a contract). The tariff includes two price components: a fixed charge (referred to as a supply charge) and a variable charge (referred to as a consumption charge).

All customers in Western Australia on a tariff pay the same electricity prices, regardless of whether they live in Perth or in rural areas.

In relation to the consumption charge, as a residential customer of an electricity or gas on-supplier (i.e. park operator), long-stay tenants have the following rights:

- the park operator must provide each long-stay tenant with information on the quantity of electricity they have used and the fees and charges they must pay;
- if the park operator buys electricity from Synergy or Horizon Power, a long-stay tenant may not be charged more for their electricity than a residential customer of Synergy or Horizon Power would be charged²⁹⁴;

²⁹⁴ The current charge for metered consumption for residential customers under the *Energy Operators (Regional Power Corporation) (Charges) By-laws 2006* and *Energy Operators (Electricity Generation and Retail Corporation) (Charges) By-laws 2006* is 24.5961 cents per unit

- if the park operator generates its own electricity, a long-stay tenant may not be charged more for the electricity they use than the cost the park operator incurs in generating the tenant's electricity²⁹⁵; and
- if the park operator supplies a long-stay tenant with reticulated gas (i.e. gas from pipelines, not bottled gas), the long-stay tenant may not be charged more for their gas than the park operator is charged by the retailer.

Where electricity is supplied by a person who is not Synergy or Horizon power (and is not generated by the park operator), there are no restrictions on the rate per unit chargeable for electricity consumption. However, the CIAWA recommends that its members charge no more than the amount necessary to recover their costs and use the supplier rate to the park as a guide.

In relation to the supply charge, clause 6(3) of the Electricity Industry (Caravan Park Operators) Exemption Order 2005 (Exemption Order) provides that any fees or charges imposed by the park operator for the supply of electricity services (defined as services for, or in connection with, the supply of electricity and includes the provision, maintenance and reading of a meter) in relation to a site occupied by a long-stay tenant must not, in total exceed the fixed charge to be paid under the relevant by-laws²⁹⁶.

The supply charge fixed by the by-laws is currently set at a rate of 48.5989 cents per day for the first home (one resident) and 37.7348 cents per additional home (all other residents)²⁹⁷. Any meter reading must therefore fall within this supply charge and not be levied by a park operator in addition to the supply charge.

The supply charge will only be restricted to the above amount if the park is in a Synergy or Horizon Power licence area²⁹⁸. If it is not, then the charges for electricity services are unrestricted.

The Government provides concessions and rebates to eligible permanent caravan and park home residents (i.e. those living in a residential park for three months or more).

²⁹⁵ Clause 6(2) Electricity Industry (Caravan Park Operators) Exemption Order 2005

²⁹⁶ In a licence area in which the Electricity Retail Corporation (i.e. Synergy) sells electricity to customers, the supply charge must not exceed the fixed charge to be paid under the Energy Operators (Electricity Retail Corporation) (Charges) By-laws 2006 by consumers for electricity supplied for residential use only; and in a licence area in which the Regional Power Corporation (i.e. Horizon Power) sells electricity to customers, the supply charge must not exceed the fixed charge to be paid under the Energy Operators (Regional Power Corporation) (Charges) By-laws 2006 by consumers for electricity supplied for residential use only

²⁹⁷ By-law 7 of Energy Operators (Regional Power Corporation) (Charges) By-laws 2006; By-law 9 Energy Operators (Electricity Generation and Retail Corporation) (Charges) By-laws 2006

²⁹⁸ A map of current licence areas for Synergy and Horizon Power is available on the Economic Regulation Authority website, under 'Electricity Licensing', 'Licence Holders' and 'Area Map' (for Synergy or Horizon Power)

Background

C-RIS Proposals:

Option A – Status quo but support through increased community education

This option would leave the current legislative framework as is, however education material (fact sheets) for park operators and tenants would be produced about the rules regarding the on-selling of electricity by park operators, including requirements to provide information about the charges and a list of relevant agencies that could assist in disputes regarding these matters.

Option B – Amend the standard tenancy agreements

This option involves amending the 'table of fees and charges for services and utilities' in the standard agreements to clearly set out the parameters for charging for electricity, having regard to the relevant electricity laws.

Stakeholder views

	Survey responses			Written submissions	
	Option A	Option B	Other	Option A	Option B
Tenants	17	23	5	-	1
Park operators	5	-	-	1	-
Other	-	-	-	1	4
TOTAL	22 (44%)	23 (46%)	5 (10%)	2 (29%)	5 (712%)

Overall the survey responses did not reveal a preferred option. Both Options A and B received similar levels of support. Five respondents indicated their support of the option 'Other', although no further detail was provided as to what this further option might involve. Park operators preferred no change.

The small number of written submissions that addressed this issue indicated a preference for Option B. However, comments made in both the survey responses and the written submissions suggest that the issue may perhaps relate more to other costs and fees that the park operator may charge in relation to the supply of electricity, such as a meter reading fee, rather than the method of charging for electricity consumption. In particular, a number of survey respondents expressed concern with the meter reading fee they are charged and the regularity with which their meter is read.

Feedback from a number of tenants suggests that some park operators are charging a meter reading fee in addition to the supply charge. In this situation, the imposition of a meter reading fee is unlikely to fall within the conditions set down in the Exemption Order, at least in the case where the electricity is supplied by Synergy or Horizon Power or is supplied in an area in which those suppliers are licensed to supply electricity. In those circumstances the imposition of a meter reading charge could render the park operator liable to be prosecuted for supplying electricity without a licence. In this instance, the Department of Finance (WA) would have regulatory jurisdiction.

The Department of Finance is the responsible government agency for administering *Electricity Industry Act* 2004 and the Exemption Order. If a long-stay tenant is concerned that they are being charged an amount for ‘electricity services’ (i.e. a supply charge) that is more than what is prescribed, they may contact the Department of Finance for assistance.

If a long-stay tenant has a problem with Synergy or Horizon Power regarding bill payment or a complaint regarding service or electricity supply that cannot be resolved with the relevant provider, then the long-stay tenant should contact the Energy Ombudsman. The Energy Ombudsman can investigate a range of customer complaints related to Synergy or Horizon Power.

The comments of three tenants who responded to the survey suggested that those respondents believe that the amount of the supply charge is set by the park operator. However, as noted above, the supply charge forms part of the tariff that is set by the Government. The supply charge is capped, and is a fixed daily charge that can be passed on by a park operator for every individual resident being charged for electricity at the park. The supply charge is a rate per day for the provision of electricity infrastructure within the park (including the provision, maintenance and reading of a meter to measure and record the quantity of electricity supplied to a site).

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo (non-legislative option involving education)	<ul style="list-style-type: none"> Assist the relevant parties to comply with current laws by setting out their respective obligations. 	<ul style="list-style-type: none"> Current gaps in regulating electricity charges continue to exist if electricity is supplied to a park by an entity other than the operator or a licensed electricity retailer.
Option B– Amend the standard contracts	<ul style="list-style-type: none"> Assist the relevant parties to comply with current laws by setting out their respective obligations. Would allow restrictions to be placed on the charging for electricity to the tenant, regardless of who generates the electricity. Provide clarity about the rules in charging for electricity. 	<ul style="list-style-type: none"> May cause confusion between existing and new tenants as the contract terms would appear different.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo. Park operators would continue to charge residents for electricity in accordance with government tariffs and orders.
- Option B – Negative impact. Electricity consumption and supply charges are already regulated by legislation administered by the Department of Finance.

Home owners and renters:

- Option A – Positive impact. Increased education and awareness of how electricity charges are set and regulated by government will make it easier for tenants to understand their electricity bills and query items.
- Option B – Negative impact. It is unlikely that sufficiently detailed information could be included in a table to assist tenants to fully understand the regulatory framework for the charging of electricity.

Government:

- Option A – Minimal impact. While resources would need to be allocated to develop and disseminate education material to stakeholders, it is anticipated that this cost will be largely offset by a reduced number of disputes between park operators and long-stay tenants regarding electricity charges and a reduced number of matters being brought before the SAT for determination.
- Option B – Negative impact. Electricity charges are already regulated by legislation administered by the Department of Finance.

Assessment against the objective

- Option A – Providing education material and advice to stakeholders (via the Department's website; newsletters; information sessions; etc.) on how electricity pricing is regulated will ensure electricity bills are better understood and reduce the potential for matters to be referred to the SAT for determination.
- Option B – It is unlikely that sufficient detail could be included in the costs and charges table of the standard form contract to fully explain how electricity pricing is regulated in Western Australia.

16 MAINTENANCE AND SHARED FACILITIES OR PREMISES

Provision and use of shared premises or facilities is a key factor in community living. The RPLT Act provides that the shared premises in a park means the common areas, structures and amenities (including fixtures, fittings and chattels) in the park that the park operator provides for the use of, or makes accessible to, all long-stay tenants²⁹⁹. The shared premises will vary for each individual park and will include facilities such as roads, recreational areas, ablutions blocks, swimming pools, camp kitchens and community halls.

Under the RPLT Act, unless the agreement provides otherwise, it is a term of a long-stay agreement that a park operator provide and maintain the shared premises in a reasonable state of cleanliness and repair³⁰⁰. At present the parties may vary this provision, however it has been proposed that the RPLT Act be amended to remove the ability for park operators to contract out of or vary this essential obligation (see part 7.1 of this paper).

The park operator must also comply with all relevant building, safety and health laws, for example, the CPCG Act includes obligations in relation to the standard and maintenance of shared premises. Obligations are also imposed on tenants to keep premises in a clean and reasonable state.

A tenant may make an application to the SAT if a park operator fails to comply with their repair and maintenance obligations under the long-stay agreement, and the SAT has the power to make an order requiring the park operator to perform the obligation³⁰¹.

The SAT may also make an order reducing the amount of rent payable on the grounds that there has been a significant reduction in the:

- size or quality of the agreed premises;
- number or quality of the chattels provided with the agreed premises; or
- extent or quality of the shared premises or the facilities provided as part of the shared premises³⁰².

16.1 SERVICES AND FACILITIES PROMISED BY THE PARK OPERATOR

Issue

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

Objective

To provide appropriate remedies for tenants when a park operator does not provide facilities or services that have been promised during pre-contractual negotiations.

²⁹⁹ RPLT Act – glossary

³⁰⁰ RPLT Act – section 32 and schedule 1 Item 7

³⁰¹ RPLT Act - section 62(4)(b) – this section provides that the SAT may require any action in performance of a long-stay agreement

³⁰² RPLT Act – section 63

Recommendation

Option B – SAT to have the power to order specific performance, compensation, a reduction in rent or rescission if facilities or services promised during pre-contractual negotiations are not provided.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report.

The proposed requirements would extend to both oral and written representations, however proving an oral representation will always be more difficult. The proposed changes to disclosure requirements set out in part 9 will include mechanisms for tenants to set out any representations they have relied on in entering into the long-stay agreement. This will assist in clarifying the representations for both parties and providing evidence of the representations in the event that a dispute arises.

If the park operator has made a representation in good faith, but is unable to provide a facility or service due to circumstances beyond their control, it is proposed that remedies still be available to a tenant who has relied on that representation. The SAT would take into account the specific circumstances in determining an appropriate remedy.

For representations as to provision of facilities made after the contract has been entered into the report proposed that tenants be given the ability to apply to the SAT for an appropriate remedy if they have suffered loss as a result of the representation, for example, if the tenant has agreed to pay a higher rent.

In responding to the report, the majority of stakeholder responses supported Option B³⁰³. However, three respondents opposed Option B, with the tenant respondent preferring the status quo. CIAWA argued that the requirement should be limited to only those representations included in the disclosure document, and the park operator respondent argued that only written representations should be actionable. The park operator also expressed concern regarding the consequences of an order of specific performance, and that such an order could potentially result in an operator becoming insolvent.

Option B remains the preferred option. However, it will be clarified that the provisions will only apply in relation to representations made by or on behalf of the operator, not to representations made by a home owner in the course of the sale of a home.

The proposed requirements will extend to both oral and written representations (including representations made in advertising material),.

Background

Currently, under the RPLT Act a tenant could possibly enforce performance of an undertaking to provide a facility or service by seeking an order from the SAT for the 'performance of a long-stay agreement'³⁰⁴. In order for an action of this nature to succeed it would be necessary to prove that the promise to provide certain facilities or services was a term of the long-stay agreement.

³⁰³ Cockerham, Engwirda, GG Corp, NLV, Fourmi Pty Ltd and PHOA

³⁰⁴ RPLT Act – section 62(4)(b)

The RPLT Act also provides that a tenant may seek an order for a reduction in the amount of rent payable, but the grounds for such an order are limited to where there has been a significant reduction in the size or quality of the agreed premises, in the number or quality of the chattels provided with the agreed premises or in the extent or quality of the shared premises or the facilities provided as part of the shared premises since the contract was entered into³⁰⁵. The provision does not cover circumstances where facilities or services have been promised, but not provided.

In Queensland the tribunal has the specific power to make an order reducing rent if it is satisfied that a communal facility or service described in advertising, or in a document made available to the home owner before the site agreement was entered into, has not been provided³⁰⁶. An equivalent provision has been included in the New South Wales Act³⁰⁷.

The ACL, which applies to park home agreements in Western Australia, provides that a person may not make false or misleading representations or engage in misleading and deceptive conduct and provides for a broad range of remedies. However, a tenant would need to take action in the courts in order to enforce their rights under the ACL, as the SAT does not currently have the jurisdiction to consider whether the requirements of the ACL have been breached. It is important to note, however, that the ACL would not apply in all circumstances where the park owner has failed to provide promised facilities or services. The ACL provisions would not apply, for example, if at the time of making the representation the park owner intended to provide the facilities or services and had a reasonable belief that they could do so yet some other intervening event, such as financial hardship, was now preventing them from doing so. In these instances, a remedy such as that allowed for in Queensland and New South Wales may be more appropriate.

C-RIS Proposals:

Option A – Status quo

Tenant's rights and remedies limited to those currently provided in the RPLT Act and the ACL.

³⁰⁵ RPLT Act – section 63

³⁰⁶ *Manufactured Homes (Residential Parks) Act 2003* (Qld) - section 72

³⁰⁷ *Residential (Land Lease) Communities Act 2013* (NSW) – section 64

Option B – Give the SAT the power to make orders for specific performance, compensation, a reduction in rent or rescission of the contract if facilities or services promised during pre-contractual negotiations are not provided.

Under this option the RPLT Act would be amended to give the SAT the power to make the following orders where a park operator has not provided services or facilities promised as part of pre-contractual negotiations:

- an order requiring the park operator to provide the facility or service (specific performance);
- an order that the park operator pay the tenant compensation;
- an order for a reduction in the rent payable; or
- in circumstances where the tenant would not have entered into the contract had the tenant known that the facility or service would not be provided, an order rescinding (cancelling) the contract.

These broader powers for the SAT would operate in conjunction with the more expansive disclosure requirements proposed in part 9 of this paper, which will provide for greater transparency and give tenants an opportunity to note those representations that they relied on when entering into a long-stay agreement.

Stakeholder views

	Survey responses		Written submissions	
	Option A	Option B	Option A	Option B
Tenants	6	45	-	5
Park operators	6	-	5	1
Other	-	-	-	1
TOTAL	12 (21%)	45 (79%)	5 (42%)	7 (58%)

A number of respondents to both the discussion paper and the C-RIS indicated that they had entered into long-stay agreements in reliance on representations about facilities or services to be provided in the future, however the promised services were never provided or were provided to a lower standard than expected. Tenants also raised this issue at information sessions run by the Department in relation to the review.

The types of services or facilities referred to by tenants as having been promised but not delivered include a new community hall, an extension to the existing hall, security services, spa, water feature, village green, croquet court, green initiatives (such as a grey water reticulation system and recycling) and community bus services.

Park operators are generally of the view that the current legislation is adequate and that no additional protections are required³⁰⁸. Some operators expressed concern that the ability to take action in the SAT might be misused by tenants to bully operators into doing work³⁰⁹ or to seek to have work done that the majority of tenants do not want³¹⁰. NLV stated that if Option B were implemented, the only remedies should be compensation or cancellation of the contract.

Tenants expressed the view that it is only fair that a park operator provide what has been promised³¹¹ and that provisions such as those suggested in Option B would serve as incentive for park operators to take great care in making pre-contractual representations³¹². A number of respondents were of the view that it was more appropriate for the SAT to determine these matters than to require tenants to take separate action in the courts under the ACL³¹³. One survey respondent stated that tenants seriously consider existing and proposed facilities when making a decision about entering a park, if those facilities are not provided it can adversely affect the wellbeing of the tenant.

PHOA suggested that shared facilities should be detailed in the contract, together with dates by which those facilities will be functioning.

Riverside Gardens stated that Option B would 'provide tenants/home owners a high degree of confidence that promised facilities would be provided and would certainly deter developers and owners from making false promises. It could also ensure that operators/developers made sure their sales staff was fully trained and aware of all ramifications of making false claims to secure a sale'.

CIAWA³¹⁴ suggested that, if Option B were implemented, there should be an exemption for claims against a park operator who has made a representation in good faith, but cannot fulfil the obligation due to circumstances beyond their control (such as non-approval by a regulatory authority). Riverside Gardens stated that there should be the opportunity to renegotiate contracts if the majority of tenants do not want a promised service or facility.

The C-RIS asked, if Option B were implemented, whether the requirements should only apply in relation to written representations or should the SAT also be able to take into account oral representations made by park operators. The majority of tenant respondents (38) to the survey were of the view that both written and oral representations should be taken into account, whereas all park operators respondents (5) and some tenant respondents (11) were of the view that the requirements should only apply to written representations.

The submissions were mixed in their responses to this question. CIAWA³¹⁵ was of the view that, for certainty, only representations made in writing should be actionable. Similarly, NLV stated that the requirements should apply only to representations included in the disclosure material, with the onus upon the tenant to include any representations that they are relying on in that disclosure material.

³⁰⁸ CIAWA, Carine Gardens, Aspen, NLV and Confidential operator

³⁰⁹ Confidential operator

³¹⁰ NLV

³¹¹ Watt, COTA and a number of survey responses

³¹² Watt

³¹³ Goldfields CLC, Consumer Advisory Committee, Tenancy WA

³¹⁴ Supported by Aspen and Carine Gardens

³¹⁵ Supported by Carine Gardens

Riverside Gardens stated that ‘it would be preferable to be about written representations although the case for both in the pre-contract stage does have merit and we could accept both.’ The Consumer Advisory Committee was of the view that it would be desirable for the SAT to take into account oral representations.

The C-RIS also asked, if Option B were implemented, whether the requirements should also apply in relation to representations made after the contract was entered into, for example, where a park operator promises new facilities to existing tenants. In response to the survey, the majority of tenant respondents (44) and one park operator respondent supported the extension of Option B to representations made after the contract has been entered into, with tenants stating that they were of the view that existing tenants should not be treated differently to incoming tenants. The majority of park operator respondents (4) and a small number of tenant respondents (2) opposed this proposal.

In the submissions, it was noted that tenants may have some difficulty making a claim unless there was some reciprocal basis for the promise³¹⁶, such as a rental increase. Riverside Gardens was of the view that the potential for misunderstanding is high and suggested that the requirements only apply ‘where the operator has done the required feasibility study and advised residents in writing setting out a proposed time frame’. The Consumer Advisory Committee was of the view that adequate remedies already exist in the event of promises made in conjunction with a rental increase.

Goldfields CLC supported the extension of the requirements and stated ‘this is especially desirable in order for there to be procedural fairness’.

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> No change to compliance costs or procedures for park operators. 	<ul style="list-style-type: none"> Tenants’ right to seek a reduction in rent is limited to where there has been a reduction in level of services or facilities and does not cover circumstances where the facilities or services are promised, but not provided. Tenants may need to commence separate proceedings in the courts under the Australian Consumer Law. Remedy under the Australian Consumer Law would only be available where the park owner has engaged in misleading and deceptive conduct or has made false and misleading representations.

³¹⁶ Watt

	Potential benefits	Potential disadvantages
Option B – Give the SAT the power to order specific performance, compensation, a reduction in rent or rescission.	<ul style="list-style-type: none"> • Allows for a broad range of remedies in circumstances where a park operator has failed to provide facilities or services promised in pre-contractual representations. The SAT will have the capacity to apply an appropriate remedy depending on the circumstances of each individual matter. • May provide incentive for park operators to take greater care in making pre-contractual representations. 	<ul style="list-style-type: none"> • A requirement that a park operator perform an undertaking could impose additional costs on a park operator, resulting in solvency issues. • May result in an increase in the number of matters before the SAT – cost implications.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Minimal impact. Continuation of the status quo. However, park operators may be the subject of actions for performance of the long-stay agreement in the SAT or in the courts for misleading and deceptive conduct under the ACL.
- Option B – Minimal impact. Clear right of action and specific remedies will be included in the RPLT Act in relation to pre-contractual representations. Park operators will need to take care in making representations to prospective tenants about future developments in the park and will need to ensure that they are able to provide facilities or services promised.

May result in a reduction in costs in the event of a dispute by providing the SAT with the power to deal with these issues.

Home owners and renters:

- Option A – Negative impact. Continuation of the status quo means that the rights of tenants to seek remedies in relation to unfulfilled representations limited.
- Option B – Positive impact. Benefits tenants by providing a clearer right of action and specific remedies in the RPLT Act in relation to pre-contractual representations. May result in a reduction in costs in the event of a dispute by providing the SAT with the power to deal with these issues.

Government:

- Option A – Minimal impact. Continuation of the status quo.
- Option B – Minimal impact. May result in an increase in the number of actions before the SAT, with a resulting impact on resources.

Assessment against the objective

- Option A – Some rights provided for tenants to seek performance of the long-stay agreement. However, the remedies are limited and in some instances a tenant may be required to take action in the courts under the ACL.

- Option B – Provides a clear right of action and a broad set of remedies.

16.2 ONGOING MAINTENANCE AND REPAIR

Issue

Tenants have raised concerns about circumstances where park operators fail to comply with ongoing maintenance obligations or to undertake repairs in relation to shared property. For example, cleaning of shared facilities, maintenance of roads or repairs to a swimming pool.

Objective

To ensure that the SAT has adequate power to address issues concerning performance of maintenance obligations.

Recommendation

Option B – SAT to have the power to order maintenance and repair works to be carried out.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it would ensure that the SAT has adequate power to address issues concerning performance of maintenance obligations. In making any orders the SAT would consider what timeframes are reasonable in the circumstances, for example, more urgent matters would have a shorter timeframe imposed.

In responding to the report, four respondents (tenants and their representative body) supported Option B³¹⁷, while six respondents opposed the option (park operators and their representative body)³¹⁸. CIAWA argued that the changes would be a duplication of regulation. Facilities should be tested against health, building and safety standards. CIAWA also commented that the level of rent is a market force issue which does not require the intervention of the SAT. A number of operators claimed that the current mechanisms are sufficient and raised concerns that the SAT would be effectively placed in control of a park's spending on maintenance and repairs.

Background

Under the RPLT Act, unless the agreement provides otherwise, it is a term of a long-stay agreement that a park operator provide and maintain the shared premises in a reasonable state of cleanliness and repair³¹⁹. A tenant may make an application to the SAT if a park operator fails to comply with an obligation under the long-stay agreement, including repair and maintenance obligations, and the SAT has the power to make an order requiring the park operator to perform the obligation³²⁰.

As noted above, it has been proposed that the RPLT Act be amended to remove the ability for park operators to contract out of or vary this essential obligation (see part 7.1). However, prohibiting park operators from contracting out of this provision may not be sufficient to ensure that park operators meet their obligation in a reasonable and timely manner.

³¹⁷ Wolff, Cockerham, Engwirda and PHOA

³¹⁸ GG Corp, NLV, Fourmi Pty Ltd, Discovery Parks, confidential operator and CIAWA

³¹⁹ RPLT Act – section 32 and schedule 1 Item 7

³²⁰ RPLT Act - section 62(4)(c)

The New South Wales Act imposes an obligation on the operator of a community to maintain the common areas in a reasonable state of cleanliness and repair and gives the tribunal the power to order that work be carried out (to an appropriate standard) in order to meet that obligation. The standard to which work must be carried out is determined having regard to the age and prospective life of the park and the level of fees and charges payable by residents³²¹.

C-RIS Proposals:

Option A – Status quo

Tenant's rights and remedies limited to those currently provided in the RPLT Act. A tenant can seek an order for performance of the maintenance obligations set out in the specific long-stay agreement.

Option B – Impose a specific maintenance and repair obligation in the RPLT Act and give the SAT the specific power to order that work be done

Under this option the RPLT Act would be amended to impose an obligation on the park operator in relation to maintenance and repair, including a requirement that work be carried out as soon as is reasonably practical and to a standard that is reasonable in the circumstances. The SAT would be provided with the specific power to make an order requiring that work be carried out in order to meet the park operator's obligations under these requirements. The SAT would be required to consider what is reasonable in the circumstances, taking into account the age, character and prospective life of the facilities. It may also be appropriate for the SAT to take into account the level of rent paid by tenants.

Stakeholder views

	Survey responses			Written submissions	
	Option A	Option B	Other	Option A	Option B
Tenants	12	37	1	-	5
Park operators	6	-	-	7	-
Other	-	-	-	-	1
TOTAL	18 (32%)	37 (66%)	1 (2%)	7 (54%)	6 (46%)

Park operators and their representatives are of the view that no changes are required as there is currently sufficient regulation under the RPLT Act and other laws relating to health and safety³²². Some argue that there would be an increase in the number of applications to the SAT and a possible increase in rents to cover costs arising from the implementation of Option B³²³. Others raised concerns about having a third party looking over their shoulder imposing work orders³²⁴, with NLV stating that the implementation of Option B would effectively hand the commercial operation of the park over to the SAT.

³²¹ Residential (Land Lease) Communities Act 2013 (NSW) – section 37

³²² CIAWA, Carine Gardens, Aspen

³²³ Riverside Gardens

³²⁴ Mandurah Gardens

The majority of tenants and their representatives³²⁵ and the Consumer Advisory Committee support Option B. Goldfields CLC stated that Option B would provide greater certainty to both tenants and operators. Tenancy WA was of the view that ‘park operators would not be unfairly impacted by this amendment if the proposed SAT power is broad enough to consider what is reasonable and justified in the circumstances’.

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> SAT currently has the power to order performance of obligations under a long-stay agreement. 	<ul style="list-style-type: none"> Maintenance obligations may be limited by contractual provisions.
Option B – Include a maintenance and repair obligation and give the SAT the specific power to order works be carried out	<ul style="list-style-type: none"> Greater certainty for tenants provided by imposing a statutory obligation. Provides a clear power for SAT to order that works be undertaken. 	<ul style="list-style-type: none"> May result in an increase in the number of matters before the SAT – this may have cost implications for park operators and for SAT. May result in an increase in rents to cover potential costs.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo. Long-stay agreements continue to include a clause requiring the park operator to provide and maintain the premises in a reasonable state of cleanliness and repair. This provision may currently be varied by agreement³²⁶.
- Option B – Minimal impact. Park operators are currently required to comply with contractual obligations to maintain and repair premises, as well as obligations imposed under other legislation in relation to health and safety obligations. Implementation of Option B will simply clarify these obligations in statute and provide tenants with clear a mechanism for seeking compliance with the obligations.

There may be some impact on those operators who currently vary the maintenance obligations in their contracts. The SAT will be required to consider what is reasonable in the circumstances, taking into account the age, character and prospective life of the facilities. This requirement will ensure that orders are not unduly onerous.

Home owners and renter:

- Option A – Negative impact. Continuation of the status quo means tenants are required to rely on contractual maintenance and repair obligations.

³²⁵ PHOA, Tenancy WA, Watt, Goldfields CLC, COTA

³²⁶ Note the proposed amendments at part **Error! Reference source not found.** to remove the ability of the parties to contract out of these obligations

- Option B – Positive impact. Provides a clear statutory obligation of maintenance and repair and a mechanism for tenants to take action.

Government:

- These options would have a minimal impact on government. There may be a slight increase in the number of applications to the SAT under Option B. However, subject to any potential resource implications, the SAT has advised that it has the necessary expertise and ability to exercise these powers.

Assessment against the objective

- Option A –The extent of the maintenance obligation is dictated by the terms of the specific contract.
- Option B – Provides a clear statutory obligation in relation to maintenance and repair and gives the SAT flexibility to make appropriate orders depending on the particular circumstances.

16.3 TRANSPARENCY IN RELATION TO MAINTENANCE COSTS

Issue

Both tenants and park operators appear to be of the view that rent should cover all tenancy costs, including maintenance and repairs. However, some tenants have suggested that there should be greater transparency with regards to how the maintenance component of rent is allocated.

Objective

Ensure there is fairness and accountability in relation to expenditure on maintenance and capital improvement.

Recommendation

Option A - maintenance and repairs continue to be funded out of monies received as rent, no requirement to report on how monies expended).

Statutory Review Report

Option A (status quo) was the preferred option in the Statutory Review Report as the costs associated with Option B in requiring park operators to report on maintenance, repair and capital expenditure are likely to outweigh any benefits that might accrue. Other provisions of the RPLT Act relating to maintenance and repair obligations, including the proposed imposition of a statutory obligation to maintain and repair the premises (see part 16.2), will adequately protect the interests of tenants.

The majority of stakeholder responses to the report supported maintaining the status quo³²⁷. One respondent supported option B³²⁸.

³²⁷ Wolff, Cockerham, Engwirda, GG Corp, confidential operator, NLV, Fourmi Pty Ltd, Discovery Parks, CIAWA and PHOA

³²⁸ Izzard

The status quo remains the preferred option as the costs associated with Option B in requiring park operators to report on maintenance, repair and capital expenditure are likely to outweigh any benefits that might accrue.

Background

C-RIS Proposals:

Option A – Status quo

No change. Maintenance and repairs would continue to be funded out of monies received as rental, no requirement imposed on the park operator to report on how monies expended.

Option B – Require park operators to report annually on expenditure on maintenance and capital

Under this option, park operators would be required to report annually to residents in relation to expenditure on maintenance, repair and capital improvement. Introduction of such a requirement would allow tenants to see exactly how much money has been spent on maintaining and improving the park each year. This reporting could include costs such as cleaning of common facilities (for example, ablutions blocks and swimming pools), rubbish removal, maintenance of roads, maintenance of trees, repairs and replacement in relation to common facilities and any capital improvements.

The provision of this information would assist the SAT in determining any disputes arising in relation to maintenance obligations.

Stakeholder views

	Survey responses		Written submissions	
	Option A	Option B	Option A	Option B
Tenants	17	33	5	2
Park operators	4	1	6	-
Other	-	-	1	-
TOTAL	21 (38%)	34 (62%)	12 (86%)	2 (14%)

Park operators generally did not support the introduction of a requirement to report on expenditure on maintenance, repair and capital improvement. In their survey responses, operators stated that these matters are business decisions made by the park operators.

CIAWA³²⁹ is of the view that ‘unless a park operator is permitted to recover maintenance and park overhead costs directly from a resident by way of an outgoings charge, there is no basis for compelling a park operator to disclose the expenditure on such items. There is no comparable provision in the [Residential Tenancies Act] in regard to tenancies’.

³²⁹ Supported by Carine Gardens and Aspen

A number of respondents, including both tenants and operators, argue that Option B would impose an additional administrative burden and cost on park operators³³⁰.

Tenancy WA believes that ‘maintenance and repairs should be funded out of a park operator’s rental income, with no onerous requirements to report on how this money is expended. While increased transparency may give long-stay tenants a better understanding of how rental money is being used, there are already provisions in the RPLT Act and new proposals to apply for relief when a park operator fails to undertake proper maintenance work’.

Riverside Gardens states ‘the probable inability of many residents to comprehend the running costs and maintenance issues of a village would undoubtedly lead to conflict and arguments. This is considered part of the business of the operator and not seen as something that needs to be added to the mix of issues that a resident needs or should be involved in. It would be another burden on the administration of a village with little or no benefit’.

Tenant responses to the survey indicate support for Option B as it would provide greater transparency, particularly in those cases where increased maintenance or capital costs have been used by operators to justify rents increases.

PHOA is of the view that ‘if maintenance or repairs do not affect a tenant's current or future rent, then transparency is not an issue. However, where maintenance and/or repairs are quoted as forming part of the assessment for rental increases then all financials relating to the maintenance should be available to tenants at the time of rental reviews’.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • No additional administrative requirements or compliance costs imposed on park operators. • Tenants continue to have remedies in instances where maintenance and repair obligations are not met by the park operator. 	<ul style="list-style-type: none"> • Lack of transparency in relation to allocation of funds to meet maintenance and repair obligations.

³³⁰ NLV, Riverside Gardens, Watt

	Potential benefits	Potential disadvantages
Option B – Require park operators to report annually on expenditure on maintenance and capital	<ul style="list-style-type: none"> • Greater transparency of information will allow tenants to see how funds are allocated and gives park operators a mechanism whereby they can justify rents charged. • May result in a decrease in disputes about maintenance costs and obligations. 	<ul style="list-style-type: none"> • Greater administrative burden on the park operator. • Park operators may have difficulties in clearly specifying individual costs, especially if an operator owns a number of parks and costs are spread across those parks. • May result in increased costs, which could be passed on to tenants. • May result in an increase in disputes – particularly if tenants have difficulties in understanding the details of expenditure.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo. Park operators required to comply with maintenance and repair obligations, funded out of rentals received. No reporting obligations.
- Option B – Negative impact. Will impose a reporting obligation on park operators, increasing the administrative burden and costs for operators.

Home owners and renters:

- Option A – Minimal impact. Tenants have no right to financial details in relation to maintenance and capital expenditure, but do have the right to enforce contractual maintenance and repair obligations and seek a reduction in rental if there is a reduction in the extent or quality of shared premises or facilities.
- Option B – Minimal impact. Tenants will be provided with additional information about expenditure on maintenance, repair and capital. May result in an increase in rents if park operators pass on the costs of preparing reports. May give rise to unrealistic expectations by tenants as to their rights once they have this information.

Government:

- These options would have a minimal impact on government. Option B may result in an increase in the number of applications to the SAT.

Assessment against the objective

- Option A – Limited transparency in relation to expenditure on maintenance, repair and capital costs. Park operators can be held accountable in relation to maintenance and repair obligations through enforcement of contractual provisions and mechanisms for reduction in rent in the event that the standard of facilities or services decreases.

- Option B –Provides greater transparency. However, will impose a regulatory burden and increased costs on park operators, with the costs likely to be passed on to tenants.

16.4 FUNDING OF CAPITAL IMPROVEMENTS

Issue

Whether the rent review provisions in the RPLT Act are sufficient to allow park operators (particularly those providing long term leases) to maintain and improve park facilities over time³³¹. Some park operators have indicated that rent review mechanisms are not always sufficient to cover major capital improvements and suggest mechanisms such as sinking funds or payment of a levy to fund a specific project.

Objective

To provide a mechanism to allow for funding of capital improvements in a park.

Recommendation

Option A – (status quo) maintenance and capital replacement to be funded out of monies received as rent. Park operators to budget accordingly.

Statutory Review Report

Option A was the preferred option in the Statutory Review Report as there was limited support for options B and C from stakeholders. The potential for increased costs and the additional regulatory burden arising from these options would outweigh any benefits.

All stakeholder responses to the report were in favour of retaining the status quo³³².

Background

The New South Wales Act includes a mechanism whereby the home owners in a community may, by special resolution³³³, agree to pay a special levy to enable the operator to provide a specified new facility, service or improvement. The levy must be held in trust until used for the specified purpose. The Act gives the tribunal the power to make orders quashing or confirming a special resolution in relation to a special levy³³⁴. It should be noted that the New South Wales Act applies to communities comprising of home owners only and does not apply to mixed-use parks.

³³¹ Discussion Paper – page 33

³³² Wolff, Cockerham, Engwirda, NLV, Fourmi Pty Ltd, Discovery Parks, GG Corp, confidential operator, PHOA and CIAWA

³³³ 75% of all home owners

³³⁴ *Residential (Land Lease) Communities Act 2013 (NSW)* – sections 50 and 51

C-RIS Proposals:

Option A – Status quo

No legislative change. Maintenance and capital replacement to be funded out of rents received. Park operators to budget accordingly.

Option B – Amend the RPLT Act to allow for tenants to agree, by special resolution, to pay a special levy for specified improvements

Under this option tenants would be able to agree, by special resolution, to pay a special levy to fund a specified facility, service or improvement. The levy would be held in trust until used for the specified purpose. Mechanisms would be included to allow the SAT to review a decision in relation to a levy.

Option C – Amend the RPLT Act to provide for reserve funds

Under this option a park operator would be required to establish a reserve fund specifically for the purpose of maintaining common facilities and capital replacement or improvements. This fund would be held in a separate account and could only be used for the purpose of capital replacements and development. Accounting and reporting requirements would be implemented in relation to the fund.

Stakeholder views

	Survey responses				Written submissions		
	Option A	Option B	Option C	Other	Option A	Option B	Option C
Tenants	19	4	20	1	8	1	-
Park operators	5	-	-	-	4	-	1
Other	-	-	-	-	1	-	-
TOTAL	24 (49%)	4 (8%)	20 (41%)	1 (2%)	13 (86%)	1 (7%)	1 (7%)

The majority of respondents, both park operators and tenants, support Option A and are of the view that maintenance and capital investment in the park is a matter solely for the park operator to determine³³⁵. Operators are of the view that any legislative intervention would reduce flexibility for operators in dealing with their property³³⁶.

Tenant representatives, including PHOA, Shelter WA, WACOSS and Tenancy WA, state that capital expenditure is a planned decision of the park operator resulting in improvements to the value of the operator's property. Tenants should therefore not be required to contribute separately to this expenditure and capital costs should be covered by rental income.

Some tenants raised concern about the increased complexity that would result from implementing Options B or C³³⁷ or the potential risk that tenants would be required to pay for poor decisions by park operators with regards to capital costs³³⁸ or facilities that they do not want³³⁹.

³³⁵ CIAWA, Aspen, Carine Gardens, PHOA, Shelter WA, WACOSS

³³⁶ CIAWA, Aspen and Carine Gardens

³³⁷ Watt

³³⁸ Tyndall

Goldfields CLC states that Option B ‘seems to be an appropriate option because it provides for a mechanism whereby tenants can agree to pay a one off special levy to cover the costs of a specified facility or service. This seems to be the most appropriate option given that it fosters co-operation between tenants and park operators without the more heavily regulated option C or the existing situation of option A whereby rentals are sometimes insufficient to cover capital improvements.’

NLV indicated support for Option C ‘subject to this being optional on the part of an operator, with the existence or non-existence of the fund being specified in disclosure material, and with the operator being entitled to require contributions to the fund (as a separate matter to rent). NLV is of the view that Option C ‘would provide transparency and allow operators to better provide for repairs and maintenance. Option B is unlikely to be workable in practice, as tenants are unlikely to vote to pay the levy’.

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Tenants not required to pay additional fees, maintenance and capital costs included in the rental – provides some certainty. • No additional administrative burden on park operators. 	<ul style="list-style-type: none"> • In some instances, rentals not sufficient to fund capital improvements.
Option B – Provide for a mechanism whereby tenants can agree to pay a special levy to pay for a specified facility or service	<ul style="list-style-type: none"> • Allows park operators and tenants to agree on improvements required and provides for a mechanism to fund the improvements. 	<ul style="list-style-type: none"> • Tenants may be required to pay a levy for improvements they do not agree to. • Tenants may put pressure on a park operator to make capital improvements that are not within the operator’s business plan. • Increased costs for tenants. • Increased complexity. • Could result in an increase in the number of applications to the SAT. • Could result in disputes between tenants. • While a majority of tenants may agree to a levy, some may not be able to afford to pay it.

³³⁹ Survey responses

	Potential benefits	Potential disadvantages
Option C – Provide for the establishment of reserve funds by park operators	<ul style="list-style-type: none"> • Provides for a mechanism to fund maintenance and capital replacement/improvements. • Provides greater transparency in relation to allocation of funds. • May make parks more attractive to potential tenants if a healthy reserve is available. 	<ul style="list-style-type: none"> • Imposes a new regulatory burden on park operators and may result in an increase in costs. • Tenant may not realise the benefit of monies paid into a reserve fund if they leave the park. • Costs imposed on government in relation to compliance. • Depending on the nature of the fund, there could be practical difficulties in introducing a fund in a park where some tenants have already entered into agreements without a requirement to contribute to the fund and new tenants are required to contribute.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo. Operators required to budget to cover capital costs from rentals received. Operators retain control of process.
- Option B – Will increase regulatory burden on operators. Maintenance and capital investment in the park would no longer be a matter solely for the park operator to determine. However, would allow park operator and tenants to agree on improvements and mechanisms for funding.
- Option C – Negative impact. Increases the regulatory burden on operators and may result in an increase in costs. Maintenance and capital investment in the park would no longer be a matter solely for the park operator to determine. However, may decrease costs to operators if tenants are required to contribute to a fund separate to rental.

Home owners and renters:

- Option A – Positive impact. Continuation of the status quo. Operators to fund capital improvements from rents received, additional costs are not imposed on tenants. However, tenants have limited input in relation to how funds are spent, but have mechanisms in the Act to ensure that facilities maintained to an appropriate standard.
- Option B – Negative impact. Tenants can have more input in relation to capital works on the park, but at an increased cost. Risk that some tenants will be required to pay for facilities they do not use.
- Option C – Negative impact. May result in increased costs to tenants if a reserve fund is charged separately to rent. Increased administrative costs are likely to be passed on to tenants.

Government:

- These options would have a minimal impact on government. However, implementation of options B and C could result in an increase in the number of applications to the SAT.

Assessment against the objective

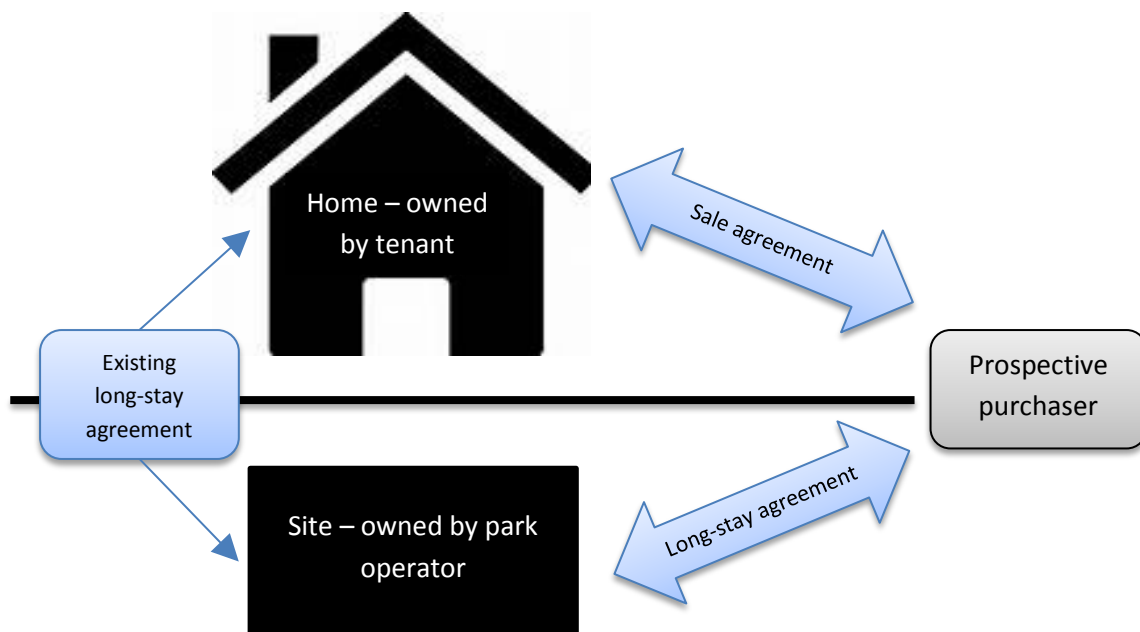
- Option A – Does not provide a mechanism to fund capital improvements. Capital improvements to be funded out of operator's budget and are dealt with through the operator's business planning processes.
- Option B – Provides a mechanism for funding capital improvements. However, this option may result in increased costs to tenants, increases the complexity of the legislation and imposes an additional regulatory burden on operators.
- Option C – Provides a mechanism for funding capital improvements. However, this option may result in increased costs to tenants, increases the complexity of the legislation and imposes an additional regulatory burden on operators.

17 SALE OF HOMES

A key factor when considering the sale of homes is that the home owner only owns the home itself and therefore is only able to sell the home, but not the underlying right to live on the site in the park. The park operator owns the site on which the home is located and therefore grants the tenancy right in relation to the site.

The incoming purchaser is required to deal with two parties when buying a home in a park:

- the outgoing home owner – in relation to the purchase of the home; and
- the park operator – in relation to the tenancy arrangements that need to be put in place for lease of the site.



17.1 THE RIGHT TO SELL A HOME WHILE IT IS SITUATED ON THE PARK

Issue

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

Under the RPLT Act a long-stay tenant is entitled to sell a home owned by the tenant while it is in place on the residential park site, unless the agreement expressly provides that on-site sales are prohibited³⁴⁰. Nomination of a sales agent is discussed separately at part 17.6.

³⁴⁰ RPLT Act – section 55

Objective

Provide certainty to home owners who offer their home for sale while it is located on-site in a park.

Recommendation

Option B – amend the RPLT Act to provide home owners with the right to sell a home on-site. It will be clarified that the right to sell a home on-site does not survive the expiry of the long-stay agreement.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it provides tenants and operators with greater certainty in relation to the right to sell a home on-site. This option is consistent with the approach in other jurisdictions.

All stakeholder responses to the report were in favour of Option B³⁴¹.

Background

Legislation in New South Wales, Queensland and South Australia simply provides that a home owner has a right to sell the home on-site, and this right cannot be excluded by agreement³⁴².

C-RIS Proposals:

Option A – Status quo

No legislative change. The right to sell a home on-site may be expressly excluded by agreement.

Option B – Amend the RPLT Act to provide a home owner with the right to sell a home on-site

Under this option, a home owner would have the right to sell a home on-site. This right would not be able to be excluded or limited in the long-stay agreement. Tenants would be required to notify the park operator before offering the home for sale and would be required to comply with reasonable requirements regarding display of 'for sale' signs (for example, size and location).

Stakeholder views

	Survey responses		Written submissions	
	Option A	Option B	Option A	Option B
Tenants	4	47	-	7
Park operators	3	2	5	1
Other	-	-	-	1
TOTAL	7 (12.5%)	49 (87.5%)	5 (36%)	9 (64%)

³⁴¹ Wolff, Cockerham, Engwirda, NLV, Fourmi Pty Ltd, Discovery Parks, Shelter WA, PHOA and CIAWA

³⁴² *Residential (Land Lease) Communities Act 2013* (NSW) – section 105(1); *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 56; *Residential Parks Act 2007* (SA) – section 50

The majority of tenant respondents supported Option B, noting that a home owner should have the right to sell their property. However, a number of respondents (both tenants and park operators) were of the view that park operators should have some role in vetting or approving purchasers if the purchasers intend for the home to remain on-site.

In their responses to the survey, park operators were of the view they should have the power to determine whether the home should remain on site after the sale and that the location of the home should not have any bearing on the sale price. The extent of park operator involvement in the sale process is discussed in part 17.4.

Park operators also noted that difficulties sometimes arise if outside real estate agents are engaged to sell the park home, as they do not necessarily have a clear understanding of park living or the rights and obligations in relation to the particular park.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> The park operator retains control of the process and the decision as to whether a park home can be sold on site. 	<ul style="list-style-type: none"> Tenant may not be able to sell home on site. Significant practical difficulties and costs arise for a tenant if they are required to move a home off-site in order to sell it.
Option B – Home owner to have right to sell home on-site	<ul style="list-style-type: none"> Provides certainty to tenants regarding the right to right to sell their home. 	<ul style="list-style-type: none"> The park operator loses some control over the process. If a park operator does not intend to grant tenancy rights to a purchaser, some confusion may arise if the purchaser believes they are purchasing not only the home, but also the right to live in the home on its current site.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo.
- Option B – Minimal impact. Limits the control of the park operator in relation to the sale process to a degree. However, requirements to notify the park operator about the proposed sale and reasonable restrictions in relation to ‘for sale’ signs and access by potential purchasers to the park will ensure that the impact on park operators is minimal.

Home owners

- Option A – Negative impact. Continuation of the status quo may mean that a home owner may experience practical difficulties and costs if required to move a home off-site in order to sell it, including that some may not be able to obtain the funds necessary to move the home off-site and would therefore be prevented from selling the home. In some cases the home owner may need access to funds from the sale in order to relocate to new accommodation. If the sale is delayed or inhibited by the requirement to move the home off-site, the home owner may not have access to these funds.
- Option B – Positive impact. Home owners provided with greater certainty with regards to the right to sell their home on-site.

Renters:

- This issue does not impact on renters.

Government:

- These options would have minimal impact on government.

Assessment against the objective

- Option A – Does not ensure the right to sell a home on-site.
- Option B – Ensures tenants have a clear right to sell their home on-site.

17.2 INTERFERENCE IN SALE BY PARK OPERATOR

Issue

The RPLT Act provides that a park operator must not unreasonably restrict potential buyers from inspecting the relocatable home and shared facilities³⁴³. Broader protections may be required to ensure that park operators do not unreasonably hinder, obstruct or interfere with the sale of a home.

Objective

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

Recommendation

Option B – amend the RPLT Act so that a park operator must not interfere with or hinder the sale of a park home by a home owner.

³⁴³ RPLT Act – section 56

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it provides greater protection for tenants and is consistent with the provisions set out in other jurisdictions.

The report noted that the proposed provisions would need to be drafted to provide park operators with a reasonable level of certainty as to what is expected and to ensure that a decision by a park operator not to enter into a tenancy arrangement with a purchaser, on reasonable grounds, is not to be considered hindering a sale.

The majority of stakeholder responses to the report supported Option B³⁴⁴; however two respondents opposed it³⁴⁵. These park operators expressed their preference for the status quo, but stated that if Option B were implemented, the provisions would need to be carefully drafted to avoid unwarranted applications to the SAT. Another operator also requested clarification regarding what circumstances would be considered to be interfering or hindering the sale of a park home.

In implementing option B, further clarification will be provided regarding the circumstances that would be considered to be interfering or hindering the sale of a park home.

For example, the following types of behaviour would likely be considered hindering or interfering with a sale:

- unreasonably restricting a prospective purchaser from inspecting the home or any common property; and
- making false or misleading statements to a prospective purchaser.

However, a decision by a park operator not to enter into a tenancy arrangement with a purchaser, on reasonable grounds, would not be considered hindering a sale. Reasonable grounds could include:

- circumstances where a park home is dilapidated and it is reasonable for the operator to require its removal from the park;
- where the potential purchaser is not suitable for the park; or
- where the current tenancy is due to expire and the operator is proposing to enter into an agreement with a different prospective tenant for the site.

Background

Legislation in most other jurisdictions applies broader protections by providing that a park operator may not interfere with, hinder or obstruct the sale of a home by a tenant³⁴⁶. These Acts generally provide that:

- a park operator will be taken to hinder a sale if they stop potential buyers from inspecting a home; and

³⁴⁴ Wolff, Cockerham, Engwirda, Fourmi Pty Ltd, Shelter WA and PHOA

³⁴⁵ GG Corp and confidential operator

³⁴⁶ *Residential (Land Lease) Communities Act 2013* (NSW) – section 107; *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 58; *Residential Tenancies Act 1997* (Vic) – sections 198 and 206ZZH; *Residential Parks Act 2007* (SA) – section 50; *Caravan Parks Act 2012* (NT) – section 146

- if a park operator reasonably withholds consent to an assignment of a lease, this is not considered to be hindering a sale.

C-RIS Proposals:

Option A – Status quo

No legislative change. Park operators may not unreasonably restrict potential buyers from accessing the home and facilities, but no broad prohibition on hindering or interfering with a sale.

Option B – Amend the RPLT Act to provide that a park operator must not interfere with or hinder the sale of a park home by a home owner

Hindering a sale would include action such as preventing a potential purchaser from entering the park or home or making misleading statements. Appropriate penalties would be imposed for breach of this requirement.

Stakeholder views

	Survey responses		Written submissions	
	Option A	Option B	Option A	Option B
Tenants	2	47	-	6
Park operators	4	-	5	1
Other	-	-	-	1
TOTAL	6 (11%)	47 (89%)	5 (38%)	8 (62%)

Both park operators and tenants acknowledge that it is generally in the interests of both parties for the sale of a home to go smoothly and that it is not necessarily in the best interests of the operator to interfere in a sale. However, responses from some tenants indicate that they are of the view that interference or hindrance sometimes does occur.

The majority of tenants support Option B, with a number stating that this option is fairer to all parties. Goldfields CLC stated that the amendment proposed in Option B is desirable so that sellers are not impeded in their attempts to sell their asset, with interference to be specifically outlined so that operators are aware of their responsibilities in this regard.

Park operators generally supported Option A and stressed the importance of a park operator having the ability to assess the suitability of a prospective purchaser and reasonably restrict access to the park for the purpose of inspections. CIAWA³⁴⁷ raised concerns about enforcing the proposals set out in Option B due to their subjective nature. CIAWA was of the view that park operators should not be penalised for answering questions honestly, even if this might deter potential buyers.

The C-RIS (and survey) asked what sort of behaviour by a park operator should be considered as interfering with or hindering in relation to the sale of a home.

³⁴⁷ Supported by Carine Gardens, Aspen and Confidential operator

Responses included:

- unreasonably limiting or obstructing access for potential purchasers;
- making misleading statements to purchasers about the quality of a home;
- unreasonably refusing to accept a prospective purchaser as a tenant;
- offering another home to a prospective purchaser in competition to that offered by the home owner, particularly if new homes are available for sale directly from the park operator;
- placing restrictions on the sale price by not allowing a home owner to reduce the price;
- limited availability of park staff to assist in sales process, this is a particular problem if the park operator is the sales agent; and
- unreasonable limitations on or removal of 'for sale' sign.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">• No change in conduct required for park operators.	<ul style="list-style-type: none">• Current prohibition may not be broad enough to cover all types of behaviour that may hinder a sale.
Option B – park operator must not interfere with or hinder sale of home	<ul style="list-style-type: none">• Provides broader protection to tenants in relation to unreasonable behaviour by park operators in relation to the sale of a home.	<ul style="list-style-type: none">• May result in increased applications to the SAT by home owners alleging interference by park operators.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo.
- Option B – Minimal impact. Broader prohibitions applied in relation to park operator behaviour. Will have limited impact on the majority of park operators who do not interfere in sale of homes. Park operators will still be able to assess suitability of potential purchasers and refuse to enter into a tenancy agreement on reasonable grounds.

Home owners:

- Option A – Negative impact. Continuation of the status quo may mean that some park operators' conduct that may hinder a sale may not be covered by the current prohibitions.
- Option B – Positive impact. Broader protection applied.

Renters:

- This issue does not impact on renters.

Government:

- These options would have minimal impact on government.

Assessment against the objective

- Option A – Provides some protections for tenants in relation to interference or hindrance of sale of a home, but some types of behaviour may not be covered by the current provisions.
- Option B – Provides broader protections for tenants. Still permits park operators to assess the suitability of incoming tenants.

17.3 USEFUL LIFE OF A PARK HOME

Issue

The EISC noted in its report that one of the most important issues that a buyer must be aware of is the fact that they are buying a depreciating asset where the value of the land is not included in the selling price³⁴⁸. Unlike traditional bricks and mortar a park home will have a limited useful life. It is therefore essential that purchasers are made aware of the date of manufacture of a home and the likely period for which that home will remain useable and relocatable.

It may also be useful to provide information to a purchaser about what sort of maintenance might be required in relation to an older home, for example, will the home require painting, or is it likely that the roof will require replacement.

Objective

To ensure that purchasers are informed about key issues relating to their purchase of a park home.

Recommendation

Recommendation presented in the Statutory Review Report (a standard information form be developed that will include key information, such as the date of manufacture of the park home and be provided by the seller or their agent to the purchaser).

Statutory Review Report

In order to ensure that clear information is provided to a purchaser of a home on-site, regardless of who the seller is, the report proposed that a standard information form be developed. This document would include key information, including date of manufacture, about the home and would be provided by the seller or their agent to the purchaser. This would be a separate process to the disclosure information provided prior to entry into the tenancy agreement.

Unlike a traditional bricks and mortar home, a park home does not increase in value over time and has a limited useful life (generally considered to be up to 75 years for manufactured homes). Age of a home is a crucial, but not well understood, factor in determining the value of a home. For example, a home owner may not be able to sell a home in the future if it has passed its useful life and in some instances, removal of a home from the park may even be required.

³⁴⁸ EISC report – page 339

Disclosure of the age of the home, combined with the Department's information and awareness strategy, should enable a purchaser to make a more informed decision about the purchase of a home.

The development of a standard information form will become more important if a larger number of home-owners sell their own homes or appoint outside agents.

The report noted that further consultation with stakeholders will be undertaken to determine the appropriate mechanism for providing key information on the sale of a home. In the United Kingdom, sellers are required to provide a "Buyer's information form". However, park operators are largely excluded from the sale process in that jurisdiction.

The report also noted that an alternative could be to develop a standard contract for sale of a park home. The contract could include:

- information about the home, including the date of manufacture;
- a condition clearly stating that the contract is conditional on the purchaser securing tenancy arrangements; and
- general information about the nature of park living and a clear statement that the purchaser is only purchasing the home and not a freehold interest.

The report proposed that the standard forms be either prescribed by regulation or approved by the Commissioner.

Stakeholder responses to the report were relatively evenly split on this matter. Three respondents supported the recommendation³⁴⁹, while four opposed it³⁵⁰, re-confirming their prior position on this issue.

The report recommendation remains the preferred option. However, it will be clarified that the obligation to advise of the date of manufacture will rest with the seller – if the operator is the seller, then the operator will need to provide the relevant information. If the tenant is selling, then the obligation will rest with the tenant.

Further consultation will take place to determine the appropriate mechanism for providing key information on the sale of a home.

It is noted that the caravan parks and camping grounds legislation requires that both operators and local governments retain records with regards to the date of manufacture of park homes.

³⁴⁹ Cockerham, Shelter WA and PHOA

³⁵⁰ Confidential operator, GG Corp, Discovery Parks and CIAWA

Stakeholder views

The C-RIS and survey asked who should be required to advise the purchaser of the date of manufacture of a park home, the responses are summarised below.

	Survey responses		Written submissions		
	Operator	Seller (home owner)	Operator	Seller (home owner)	Other
Tenants	18	30	-	1	2
Park operators	-	5	-	6	-
TOTAL	18 (34%)	35 (66%)	-	7 (62%)	2 (38%)

Park operators and their representatives were of the view that any obligation to disclose a date of manufacture should be imposed on the seller³⁵¹, particularly in those instances where a park operator is not involved in the sale process³⁵². One operator cautioned against imposing a requirement on the park operator when they cannot be certain of the date of manufacture³⁵³.

Some respondents stated that a purchaser should also take some responsibility for identifying the year of manufacture and obtaining all necessary information to make an informed decision about purchasing a home³⁵⁴.

A number of tenant respondents also supported disclosure of the date of manufacture by the seller and were of the view that buyers should make all necessary enquiries and undertake inspections to satisfy themselves as to the condition of the home before purchasing it.

Goldfields CLC suggested that the date of manufacture should be made available by the park operator (in the lease agreement and disclosure documents) and by the seller (in the sale agreement). COTA was of the view that the manufacture date should be in the disclosure statement if the home is sold by the park operator or the contract of sale if sold by the home owner.

In response to the survey question as to how a requirement to notify of a date of purchase could be implemented, three respondents (6 per cent) supported inclusion on disclosure documents, 12 (26 per cent) were of the view that the information should be in the sale contract and 28 (60 per cent) were of the view that it should be in both the disclosure material and the sale contract.

³⁵¹ CIAWA, Riverside Gardens, NLV, Carine Gardens, Aspen and Confidential operator

³⁵² NLV

³⁵³ Confidential operator

³⁵⁴ CIAWA, Watt, Riverside Gardens

17.4 EXTENT OF PARK OPERATOR INVOLVEMENT IN THE SALE PROCESS

While the home owner has a right to sell the dwelling (although not necessarily on-site), the right to occupancy is granted by the park operator. Currently, the tenant is required to tell the park operator of their intention to sell the home and to advise whether they intend assigning their rights under the site agreement (if assignment is permitted)³⁵⁵. However, there is no requirement in the RPLT Act for the tenant to obtain the consent of the park operator before entering into a sale agreement. In some instances, procedures for seeking approval of the park operator in relation to a sale are included in the agreement itself.

Issue

Involvement of the park operator in the sale process is necessary, not only to protect the interests of the park operator and other residents (in terms of deciding who may reside at the park), but also to reduce risks for prospective purchasers by ensuring that adequate disclosure is made. Consideration needs to be given to determining at what point a park operator should become involved in the sale process with a genuine buyer.

Objective

To ensure that the park operator and purchaser can enter into tenancy arrangements with access to all relevant information and the home owner can sell the home with minimum interference.

Recommendation

Option C - that it will be a condition of sale that the park operator must agree to a lease with the purchaser.

Statutory Review Report

Option C was the preferred option in the Statutory Review Report. This is in line with the recommendations of EISC in its 2009 report³⁵⁶.

The majority of stakeholder responses to the report supported Option C³⁵⁷. Three respondents opposed Option C³⁵⁸, expressing a preference for either Option B (notification and disclosure) or a combination of Options B and C.

Option C remains the preferred option as it ensures that the incoming tenant is provided with disclosure and is in a position to secure tenancy rights before the contract of sale becomes unconditional.

³⁵⁵ RPLT Act – section 55

³⁵⁶ EISC report – page 341

³⁵⁷ Wolff, Cockerham, GG Corp, NLV Fourmi Pty Ltd and confidential operator

³⁵⁸ Engwirda, PHOA and Shelter WA

Background

The EISC report noted that there could be disastrous consequences for a purchaser in circumstances where they may have been misled by a seller in relation to issues concerning ongoing tenancy arrangements regarding a park home, for example, where the park operator has indicated that they do not intend to renew a lease³⁵⁹. EISC therefore suggested that it could be a condition of sale that park operators be involved in the sale process and that no transaction takes place until they have provided full disclosure to a potential buyer³⁶⁰.

Other jurisdictions specify varying methods for ensuring that a park operator is notified about a potential purchaser of a park home. In each of these jurisdictions, the tenant has a right to assign the lease with the consent of the park operator.

In New South Wales a home owner must ensure that a genuine purchaser is advised to contact the operator of the community about the proposed sale before a contract for sale is entered into³⁶¹.

In the Northern Territory a tenant may apply to the operator for consent to an assignment and must provide details of the person to whom the agreement is to be assigned³⁶².

In Queensland the owner of a manufactured home must give the operator notice of a proposed sale and assignment, including details of the proposed buyer. Within seven days of receipt of this notice the park owner must give the buyer a copy of the site agreement and disclosure documents (at this point a buyer may also choose to negotiate a new agreement)³⁶³.

C-RIS Proposals:

Option A – Status quo

No legislative change. The home owner is required to notify the park operator of their intention to sell the home. No legislative requirement to notify the park operator of details of a potential purchaser (although this may be dealt with in the long-stay agreement).

Option B – Require a home owner to give the park operator notification of certain details about a prospective purchaser and require the park operator to provide disclosure documents to the purchaser following receipt of this notification

Under this option, a home owner would be required to give the park operator written notification of certain details about a prospective purchaser. The park operator would be required to provide a copy of the proposed agreement and disclosure material to the purchaser (via the home owner), within a specified timeframe (for example, seven days).

Under this option the onus would be on the home owner to notify the park operator about the prospective purchaser.

³⁵⁹ EISC report – pages 339 – 340

³⁶⁰ EISC report – page 341

³⁶¹ *Residential (Land Lease) Communities Act 2013* (NSW) – section 108

³⁶² *Caravan Parks Act 2012* (NT) – section 92

³⁶³ *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 45

Option C – Provide that it is a condition of sale that the park operator must agree to a lease with the purchaser

Under this option, it would be a condition of the sale contract between the home owner and the purchaser that the park operator consents to a lease agreement with the purchaser (either by assignment of the current agreement or creation of a new agreement). The condition would not apply in those instances where a home is to be removed from the site following sale.

If the park operator does not agree to enter into a tenancy agreement on reasonable terms, the purchaser would have the option of cancelling the contract.

Under this option the park operator would be required to provide a copy of the proposed agreement and disclosure material to the purchaser prior to entry into the tenancy agreement.

Stakeholder views

	Survey responses				Written submissions			
	Option A	Option B	Option C	Other	Option A	Option B	Option C	Other
Tenants	5	9	31	2	-	4	1	3 ³⁶⁴
Park operators	3	-	2	-	3	-	4	1
Other	-	-	-	-	-	-	1	-
TOTAL	8 (15%)	9 (17%)	33 (64%)	2 (4%)	3 (17%)	4 (24%)	6 (35%)	4 (24%)

In their submissions park operators stressed the importance of park operator involvement in the sale process in order to ensure that prospective purchasers are suitable for the park. Operators stated that this is done not only to protect the interests of the operator, but to preserve the safety, security and peace of mind of residents in the park³⁶⁵.

Other operators expressed concern about potential for misleading information to be provided to a purchaser in circumstances where operator involvement in the sale process is limited. In some instances operators have had to deal with unrealistic expectations from purchasers arising out of representations made by the previous home owner³⁶⁶.

While a number of tenants acknowledge the need for park operator involvement, particularly in relation to screening of potential tenants, some tenants raised the concern that a park operator might offer a home for sale in competition to the tenant if the park operator is involved early in the sale process³⁶⁷.

Some operators supported Option A and were of the view that the issues should be left to the market or individual lease agreements³⁶⁸.

³⁶⁴ Two of these respondents support a combination of Options B and C

³⁶⁵ Riverside Gardens

³⁶⁶ Survey responses

³⁶⁷ Survey responses

³⁶⁸ NLV, Mandurah Gardens and Confidential operator

A number of tenant representatives³⁶⁹ supported Option B as it provides for an exchange of relevant information and gives prospective tenants time to consider disclosure material.

The majority of respondents (both park operators and tenants) support Option C as it provides certainty for the new tenant and allows the park operator to ensure that the prospective tenant is suitable for the park. NLV noted that Option C may be workable, provided it does not impose an obligation to grant tenancy rights to a potential purchaser.

PHOA and COTA supported a combination of Options B and C.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> The parties are free to agree to the procedures surrounding sale of a home. 	<ul style="list-style-type: none"> In the absence of provision in the lease agreement, there is no formal process to notify the park operator about a purchaser. Risk that a purchaser is unable to secure tenancy and is left with a stranded asset. Risk that purchaser is not fully informed before entering into a sale agreement.
Option B – Require home owner to notify park operator of purchaser details and require park operator to provide information	<ul style="list-style-type: none"> Ensures that the park operator is given notice of a genuine purchaser. Ensures that a purchaser is provided with disclosure material. Gives the purchaser the opportunity to consider the disclosure material before finalising purchase contract. 	<ul style="list-style-type: none"> May add time to the negotiation process in relation to the sale of the home. Regulatory burden is imposed on the park operator. Purchaser still at risk of being left with a stranded asset if unable to enter into tenancy agreement with park operator.
Option C – Provide that it is a condition of sale that the park operator must agree to a lease with the purchaser	<ul style="list-style-type: none"> Ensures that the park operator is notified of a genuine purchaser. Reduces the risk that a purchaser will be left with a stranded asset. Ensures that a purchaser is provided with disclosure material. 	<ul style="list-style-type: none"> There is less certainty for a seller (as the contract may be cancelled by a purchaser if a tenancy agreement cannot be made with the operator).

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Minimal impact. Continuation of the status quo. However, risk remains that park operator may be unaware that tenant is entering into a sale agreement.

³⁶⁹ WACOSS, Shelter WA, Tenancy WA and Goldfields CLC

- Option B – Positive impact. Gives park operator notice of potential purchaser. Burden imposed on park operator to provide disclosure material to purchaser.
- Option C – Positive impact. Gives park operator notice of potential purchaser and ensures that park operator has opportunity to assess suitability before a sale contract becomes unconditional. Burden imposed on park operator to provide disclosure material to purchaser.

Home owners

- Option A – Negative impact. Risk that incoming home owner (purchaser) will be unable to secure agreement with park operator. Risk that incoming home owner may not be fully informed before purchasing home.
- Option B – Positive impact. Ensures that incoming home owner (purchaser) is provided with disclosure material prior to entering into sale agreement. However, there may still be a risk that the purchaser is left with a stranded asset.
- Option C – Positive impact. Ensures that incoming tenant is provided with disclosure and is in a position to secure tenancy rights before the contract for sale becomes unconditional. May result in less certainty for the outgoing home owner (seller).

Renters:

- This issue does not impact on renters.

Government:

- These options would have minimal impact on government.

Assessment against the objective

- Option A – Does not provide mechanisms for ensuring that the incoming tenant is provided with the necessary information or that park operators are involved in sale process at an appropriate point in time.
- Option B – Ensures that the purchaser is provided with disclosure material and that the park operator is notified of proposed sale, but does not include a mechanism for dealing with circumstances where a park operator does not wish to enter into tenancy arrangements with the purchaser. There is still a risk that a purchaser will be left with a stranded asset.
- Option C – Includes mechanisms for ensuring that purchasers are provided with disclosure material and that the park operator has an opportunity to assess suitability of a purchaser before the sale contract is finalised. Reduces risk that an incoming tenant is left with a stranded asset. Park operator involvement in the sale process is set at a suitable point in the sale process to ensure that there is limited risk of interference.

17.5 CREATION OF TENANCY RIGHTS FOR THE PURCHASER

On the sale of a park home there are two ways in which the incoming home owner (the purchaser) can enter into tenancy arrangements with the park operator:

- assignment of the current lease agreement - the incoming home owner takes on the rights and obligations of the outgoing home owner under the existing lease for the balance of the lease term, and the agreement continues on the same terms and conditions; or
- entry into a new lease agreement – the original agreement terminates and the incoming home owner enters into a new agreement with the park operator. The terms and conditions may be different to those under the original long-stay agreement.

Issue

There is no provision in the RPLT Act compelling park operators to enter into a lease arrangement with a purchaser of a park home, either under an assignment or a new lease.

The RPLT Act provides that a long-stay agreement may specify whether a tenant may assign his or her interest under the agreement and, if assignment is permitted, whether consent of the park operator is required. If consent is required, the park operator cannot unreasonably withhold that consent³⁷⁰.

It appears that most long-stay agreements provide that a home owner may not assign their interest under the tenancy agreement, with park operators instead preferring to enter into a new long-stay agreement with the park home purchaser. This means that the purchaser is required to negotiate a new long-stay agreement with the park operator.

Tenant representatives have indicated that in most instances park operators have agreed to enter into new arrangements with the purchasers. However, any inability to secure tenancy rights for the purchaser of a park home would significantly impede the capacity of an outgoing home owner to sell and maximise the return from their asset.

Objective

To provide a mechanism for ensuring that the purchaser of a park home can obtain tenancy rights on reasonable conditions, while ensuring that park operators retain an adequate level of control over the process.

Recommendation

Option C – amend the RPLT Act to require a park operator to enter into a new agreement with a purchaser of a home unless there are reasonable grounds for not doing so.

Statutory Review Report

Option C was the preferred option in the Statutory Review Report.

Implementation of this option would ensure that park home purchasers are offered a new long-stay agreement with rent and terms that represent fair market value. If a dispute arises in relation to this issue, the SAT may take into consideration the rent and terms offered for comparable premises in the park.

³⁷⁰ RPLT Act – Schedule 1 – clause 16

Given that park operators generally do not permit assignment of long-stay agreements, but enter into new long-stay agreements, Option C is in line with current industry practice and should have the least impact.

Park operators will still retain the ability to refuse to enter into tenancy arrangements on reasonable grounds.

In responding to the report, two respondents supported Option C³⁷¹; one respondent provided qualified support³⁷²; four respondents opposed it³⁷³ expressing a preference for Option D (a right to assign, with the option of a new lease); and one park operator opposed it expressing a preference for the status quo³⁷⁴.

Park operators expressed some concern about being unilaterally locked into accepting a tenant who does not meet the criteria for living at the park, or who might not be prepared to accept the rules and conditions of the park, or who wants changes to the standard lease.

Both tenants and operators and their representatives suggested that clear guidelines in relation to reasonable grounds for refusing to lease would be needed.

Option C remains the preferred option; however guidance will be included in relation to the 'reasonable grounds' for declining to enter into a lease with a prospective purchaser, including, for example:

- where the prospective purchaser does not meet the criteria for residency, for example by reason of age, health concerns, criminal history;
- where the park operator cannot reasonably reach agreement with the prospective purchaser about the terms of the lease (based on the standard lease for the park);
- if a park home is dilapidated and it is reasonable to require its removal from the park (rather than commence a new tenancy arrangement); or
- if the term of the lease has ended and the operator reasonably requires the site for another purpose.

Background

Legislation in other jurisdictions generally provides that a tenant may assign their rights under a site agreement, provided that the operator has given consent, and that such consent cannot be unreasonably withheld³⁷⁵. These provisions apply in relation to both fixed term and periodic agreements.

The New South Wales Act also provides that if a park home purchaser requests that the operator enter into a new site agreement, the operator must enter into a new agreement unless:

- the operator declines to enter into an agreement on reasonable grounds; or

³⁷¹ Cockerham and Shelter WA

³⁷² Fourmi Pty Ltd

³⁷³ Wolff, Engwirda, PHOA and Izzard

³⁷⁴ Confidential operator

³⁷⁵ *Residential (Land Lease) Communities Act 2013* (NSW) – section 45; *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 44 and 49; *Residential Tenancies Act 1997* (Vic) – sections 195 and 206ZZD; *Residential Parks Act 2007* (SA) – section 48

- the operator and purchaser do not agree on the terms of the new agreement.

The operator must not unreasonably delay or refuse to enter into a new agreement and the site fees under the new site agreement must not exceed fair market value (the fees currently paid by the home owner or fees payable for a site of a similar size and location in the community)³⁷⁶.

In other jurisdictions it is open for a park home purchaser to negotiate with the operator to enter into a new agreement rather than an assignment of the current home owner's tenancy rights.

C-RIS Proposals:

Option A – Status quo

No legislative change. No right to assignment or grant of a new lease is included in the RPLT Act.

Option B – Amend the RPLT Act to provide that a tenant has the right to assign their rights under an agreement with the consent of the park operator

Under this option, a home owner would be able to assign their rights under a long-stay agreement to a purchaser of a home, provided that the park operator gives consent to the assignment. The park operator would not be able to unreasonably withhold consent.

Consideration could be given to specifying certain grounds upon which a park operator could refuse to give consent, for example, where the purchaser has been evicted from a residential park in the past five years for breach of a site agreement³⁷⁷. More qualitative factors could also be included, for example, where the park operator is of the view on reasonable grounds that the purchaser would not be a good fit for the park.

The effect of assignment would be specified in the legislation to provide clarity with regards to what, if any, continuing obligations apply to the parties.

Option C – Amend the RPLT Act to require a park operator to enter into a new agreement with a purchaser of a home

Under this option, a park operator would be required to enter into a new site agreement with a purchaser. However, the park operator would not be required to enter into an agreement if the operator has reasonable grounds for declining or if the operator cannot reasonably reach agreement with the purchaser as to the terms of the site agreement.

A requirement could be included that the rent under the new site agreement should not exceed the fair market value (determined by reference to the current rent payable by the home owner and in relation to comparable sites in the park). The terms of any new agreement would be required to be reasonably consistent with those in place for comparable premises in the park.

³⁷⁶ Residential (Land Lease) Communities Act 2013 (NSW) – section 109

³⁷⁷ See Residential (Land Lease) Communities Act 2013 (NSW) – section 107(4) for examples

Option D - Amend the RPLT Act to provide that a tenant has the right to assign their rights under an agreement, but require a park operator to enter into a new agreement with a purchaser if requested to do so by the purchaser

This option is a combination of Options B and C above. The outgoing tenant would have the right to assign their rights under a lease to the incoming tenant (with the consent of the park operator), but if the purchaser requested that the park operator enter into a new agreement, the park operator would be required to do so.

However, the park operator would not be required to enter into an agreement if the operator has reasonable grounds for declining or if the operator cannot reasonably reach agreement with the purchaser as to the terms of the site agreement.

Stakeholder views

	Survey responses				Written submissions			
	Option A	Option B	Option C	Option D	Option A	Option B	Option C	Option D
Tenants	5	8	19	13	-	-	2	2
Park operators	4	-	-	-	2	-	1	-
Other	-	-	-	-	-	-	1	-
TOTAL	9 (18%)	8 (16%)	19 (39%)	13 (27%)	2 (25%)	-	4 (50%)	2 (25%)

Park operators reiterated the importance of being able to assess the suitability of incoming tenants for the protection and benefit of all other tenants in a park³⁷⁸.

A number of operators support Option A and were of the view that operators should have the flexibility to decide whether to accept a purchaser as a tenant and to determine the manner in which tenancy arrangements are entered into with incoming tenants³⁷⁹. These operators appear to favour the creation of new agreements with incoming tenants to allow for updated arrangements to be put in place, but reject any proposals which reduce flexibility for operators by requiring assignment or creation of new leases.

Riverside Gardens supports Option C and is of the view that it is fairer to both parties and gives the operator the right to meet, fully inform and approve any purchaser, thus negating any chance the prospective purchaser will be left with a stranded asset.

Tenant representatives support introduction of mandatory requirements. PHOA and COTA support Option C as it provides an opportunity for full disclosure and gives some certainty for incoming tenants. PHOA is of the view that a new lease should closely reflect the existing tenant's terms (including rental) so that the seller can give an accurate indication of the likely lease conditions applicable following a sale.

³⁷⁸ CIAWA, Carine Gardens, Aspen

³⁷⁹ NLV

Tenancy WA and Goldfields CLC support Option D as it gives the incoming tenant flexibility to decide whether to accept an assignment or seek a new lease. Tenancy WA supports this option on the basis that park operators are not required to enter into a new agreement if they have reasonable grounds for declining.

In their survey responses some tenants expressed concern that there was an imbalance in bargaining power and operators would not agree to assign a lease or enter into a new agreement unless the tenants agreed to pay certain fees or commissions or comply with other requirements.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • The park operator retains flexibility in relation to the leasing arrangements they enter into and retains control over those who may enter the park. 	<ul style="list-style-type: none"> • Leases generally do not allow for assignment. • Potential for new long-stay agreements to include more onerous provisions. • Imbalance in bargaining position.
Option B – Tenant has right to assign tenancy rights to purchaser	<ul style="list-style-type: none"> • Provides greater certainty for the outgoing home owner by ensuring that a park home can be sold together with the transfer of the underlying tenancy rights. • Provides greater certainty to the parties in relation to the grant and specific terms of tenancy rights. • Decreases the administrative burden on park operators as new agreements will not be required for all tenants. • Removes the need for tenants to negotiate new agreements. 	<ul style="list-style-type: none"> • Reduces flexibility for park operators in terms of deciding who may enter park. • Limits ability of park operators to update long-stay agreements at the time ownership changes.
Option C – Operator must enter into new agreement with purchaser unless there are reasonable grounds for not doing so.	<ul style="list-style-type: none"> • Provides greater certainty for the outgoing home owner and purchaser as incoming tenant in that the park operator is required to offer a long-stay agreement. • Mitigates potential power imbalance for tenants to some degree in negotiating new agreements. • Sets reasonable standards in relation to the negotiation of new agreements. • Permits park operator to update agreements when tenancy changes. 	<ul style="list-style-type: none"> • Reduces flexibility for park operators in terms of deciding who may enter park. • May limit the ability of a park operator to assess the suitability of a purchaser. • May increase the regulatory burden on park operators by requiring that new leases be prepared.

	Potential benefits	Potential disadvantages
Option D – Tenant may assign rights to purchaser, but purchaser has option to request new lease	<ul style="list-style-type: none"> • Provides greater certainty for the outgoing home owner and purchaser as incoming tenant in that the park operator is reasonably required to offer an assignment or new agreement. • Gives incoming tenant the option of seeking the agreement that best suits their needs (either an assignment or a new agreement). 	<ul style="list-style-type: none"> • Reduces flexibility for park operators in terms of deciding who may enter park and the tenancy arrangement that they will enter into. • May increase the administrative burden on park operators.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo means park operators retain flexibility to determine how new tenancy arrangement are entered into.
- Option B – Negative impact. Reduces flexibility for park operators by requiring assignment. Park operator would be able to refuse an assignment on reasonable grounds, but will have no opportunity to update lease documents. Current practice is to not to permit assignment of a lease. This option would involve a change to the current manner in which new tenancy arrangements are formed.
- Option C – Minimal impact. Reduces flexibility for park operators by requiring an operator to enter into new agreement. The park operator would be able to refuse to accept tenant on reasonable grounds. The operator will be in a position to update lease documents. Given that current practice is for new tenancy agreements to be entered into, this option is likely to have limited impact.
- Option D – Negative Impact. Reduces flexibility for park operators and provides less certainty by giving the incoming tenant the option of determining whether to accept assignment or seek a new lease.

Home owners:

- Option A – Negative impact. Continuation of the status quo means that tenants have limited ability to influence whether there is to be an assignment or a new lease. There is a risk that a park home purchaser is left with a stranded asset if they cannot secure tenancy arrangements.
- Option B – Positive impact. Provides greater certainty by requiring an assignment of lease. Reduces the risk that a purchaser will be left with a stranded asset if they cannot secure tenancy arrangements. The purchaser will have a clear idea as to the terms of the lease before they enter into the purchase contract. However, a purchaser may only have a short lease term, if this is the remainder of the current lease.
- Option C – Positive impact. Provides greater certainty by requiring a new lease. However, specific terms of the new lease are to be agreed with the park operator. Reduces the risk that a purchaser will be left with a stranded asset if they cannot secure tenancy arrangements.

- Option D – Positive impact. Provides greatest level of certainty and flexibility for tenants. Reduces the risk that a purchaser will be left with a stranded asset if they cannot secure tenancy arrangements.

Renters:

- This issue does not impact on renters.

Government:

- These options would have minimal impact on government.

Assessment against the objective

- Option A – Does not ensure tenancy rights will be created on the sale of a home. However, park operators retain control over process.
- Option B – Ensures tenancy rights will be created on the sale of a home. However, limits flexibility for park operators to update documents. Operators will retain the right to refuse assignment on reasonable grounds.
- Option C – Ensures tenancy rights will be created on the sale of a home. Park operators provided with greater flexibility in relation to the form of new long-stay agreements. Operators retain right to refuse to enter into a new lease on reasonable grounds.
- Option D – Ensures tenancy rights will be created on the sale of a home. Provides the greatest degree of certainty and flexibility for tenants. However, .limits flexibility for park operators.

17.6 APPOINTMENT OF PARK OPERATOR AS THE SELLING AGENT

The RPLT Act provides that a park operator may act as the selling agent in relation to a home to be sold on-site if there is a written agreement between the tenant and the operator³⁸⁰. The RPLT Regulations require that all site-only agreements include a statement which alerts the tenant to the fact that they are not required to nominate the park operator as selling agent³⁸¹.

The park operator is not required to be licensed as a real estate agent or a motor vehicle dealer when acting as a selling agent under a selling agency agreement, but the RPLT Act does impose a requirement that funds from a sale be deposited in a trust account³⁸².

Issue

It appears that confusion exists concerning the appointment of a park operator as the selling agent in relation to the sale of a home on site. Some long-stay agreements provide that the park operator must be appointed as the sole selling agent or that the tenant must appoint a selling agent nominated by the park operator, despite the requirement under the RPLT Regulations to include a clause stating that the tenant is not required to nominate the operator. Concerns have been raised in relation to this practice.

³⁸⁰ RPLT Act - section 57

³⁸¹ RPLT Regulations – Schedule 3 clause 31(4) and Schedule 4 clause 31(4)

³⁸² RPLT Act - section 58

Objective

To provide for transparency in relation to the appointment of a selling agent for the sale of a home and ensure that legislative requirements in relation to this are clear.

Recommendation

Option B – (with amendment) amend the RPLT Act to provide that a tenant cannot be required to appoint park operator (or agent) as selling agent.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report.

It was proposed that the existing prohibition on requiring the operator to be appointed as selling agent would be moved from the RPLT Regulations to the RPLT Act. This will provide clear legislative guidance in relation to the appointment of selling agents. This approach is supported by the SAT.

Tenants would still be free to appoint the operator as the selling agent, but can make that choice in a competitive market.

The report noted that proposed mechanisms for improving disclosure to incoming tenants on the sale of a home should operate to reduce the risks associated with appointing an outside agent, and that an education and awareness campaign would need to be undertaken to reinforce the legislative requirements.

The majority of stakeholder responses to the report supported Option B³⁸³. One respondent preferred a continuation of the status quo³⁸⁴. A number of park operators raised concern with the screening fee set by the regulations (currently \$200), and were of the view that this should be increased as considerable time is spent screening and arranging paperwork for new residents.

The RPLT Regulations already include a clause stating that the tenant is not required to nominate the operator as selling agent. Under Option B this clause will be moved from the Regulations to the RPLT Act. This will provide clear legislative guidance in relation to the appointment of selling agents. Tenants will still be free to appoint the park operator as the selling agent, but can make that choice in a competitive market.

In response to stakeholder feedback to the report, it is proposed to amend Option B to remove the \$200 cap on screening fees in the RPLT Regulations and instead impose a 'reasonable' amount requirement. This would be subject to review by the SAT.

Background

Legislation in some jurisdictions specifically provides that a home owner cannot be required to appoint the park operator as selling agent³⁸⁵. Other jurisdictions do not include limitations on the appointment of the park operator.

³⁸³ Wolff, Cockerham, Engwirda, Hunt, Discovery Parks, PHOA and CIAWA

³⁸⁴ Confidential operator

³⁸⁵ *Residential (Land Lease) Communities Act 2013* (NSW) – section 112; *Residential Tenancies Act 1997* (Vic) – section 206ZZH

C-RIS Proposals:

Option A – Status quo

No legislative change. A long-stay agreement must include a provision stating that the tenant is not required to nominate the park operator as selling agent.

Option B – Amend the RPLT Act to provide that a tenant cannot be required to appoint the park operator as selling agent

Under this option the park operator would be prohibited from requiring a home owner to appoint the operator or a person nominated by the operator as selling agent.

Option C – Permit long-stay agreements to include a requirement that the park operator be nominated as the sole selling agent

Under this option, long-stay agreements would be permitted to include a provision requiring the home-owner to appoint them as the selling agent.

Stakeholder views

It should be noted that the C-RIS examined Options B and C³⁸⁶. The feedback in relation to these options is listed below. It was apparent from feedback received at information sessions and via submissions and survey responses that confusion exists as to the current legislative requirements (Option A).

	Survey responses			Written submissions		
	Option B	Option C	Other	Option B	Option C	Other
Tenants	39	9	1	9	-	1
Park operators	1	3	1	-	6	-
Other	-	-	-	1	-	-
TOTAL	40 (74%)	12 (22%)	2 (4%)	10 (59%)	6 (35%)	1 (6%)

Park operators and their representatives³⁸⁷ support Option C. CIAWA³⁸⁸ stated that a park operator has the advantage of being able to negotiate the sale of the park home, make the necessary disclosures and negotiate a new site agreement with a purchaser. A number of operators raised concerns about the use of outside agents who do not necessarily understand the nature of residential park living or ensure that proper disclosure is made. NLV stated that it is important that the park operator be able to nominate themselves as sole selling agent, particularly where the operator wishes to ensure proper disclosure is given and the true and accurate details of the operations and facilities of the park are provided to the incoming residents, whose expectations (set during the sale process) the operator will ultimately be required to meet.

Tenants and their representatives support Option B and wish to have flexibility to either sell a home themselves or appoint an outside agent. PHOA expressed concern about the potential conflict of interest in allowing the park operator to be the selling agent³⁸⁹. The potential for a conflict of interest increases when a park operator is selling a new park home and has a number of occupied homes for sale, as it is likely that the park operator may attempt to sell the new home first. Some tenants were of the view that there is no incentive for park operators to sell an established home as there is already a secure rental income stream³⁹⁰. Tenants also raised concerns about the fact that park operators are not trained as selling agents and have limited sales experience³⁹¹.

³⁸⁶ It the C-RIS Option C was listed as Option A

³⁸⁷ CIAWA, Carine Gardens, Aspen, Riverside Gardens, NLV, Confidential operator

³⁸⁸ Supported by Carine Gardens and Aspen

³⁸⁹ PHOA

³⁹⁰ Watt, Izzard

³⁹¹ Hammond

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • The prescribed contractual clause states that the home owner is not required to nominate the park operator as selling agent - gives home owners some choice as to who to appoint as selling agent. • Reduces potential for a conflict of interest to arise. 	<ul style="list-style-type: none"> • Limits ability of park operators to become involved in sale process, may increase the risk that information is not disclosed to purchaser. • The standard clause is limited to the nomination of the park operator, may still permit the operator to require the home owner to appoint a selling agent chosen by the operator.
Option B – Tenant cannot be required to appoint park operator (or agent) as selling agent	<ul style="list-style-type: none"> • More open and transparent process for home owners (clearly provide that it covers both park operators and agents nominated by the operator) – gives home owners complete choice as to who to appoint as selling agent. • Reduces potential for a conflict of interest to arise. • Inclusion of a provision in the RPLT Act would reduce the confusion that currently exists. 	<ul style="list-style-type: none"> • Limits ability of park operators to become involved in sale process, may increase the risk that information is not disclosed to purchaser.
Option C – Permit operator to require nomination as sole selling agent	<ul style="list-style-type: none"> • As selling agent the park operator retains control over selling process allowing the park operator to approve a purchaser and provide adequate disclosure. 	<ul style="list-style-type: none"> • Potentially anti-competitive, as does not permit home owners to choose who to appoint as selling agent or allow home owner to sell home themselves. • Limits the bargaining power of tenants in relation to negotiation of commissions. • Increases potential for a conflict of interest for the park operator. • Park operators may lack skills and expertise of a qualified selling agent who could maximise the return for the home owner.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Minimal impact. In some instances, the park operator may not be appointed as selling agent. As it could restrict park operator involvement in the sale process, difficulties may arise if the purchaser is not suitable for the park or adequate disclosure is not made.

However, this risk should be mitigated by the proposals set out in part 17.4 that will ensure that park operators are informed about a proposed sale and given the opportunity to make all necessary disclosures.

- Option B – Minimal impact. In some instances, the park operator may not be appointed as selling agent. As it could restrict park operator involvement in the sale process, difficulties may arise if the purchaser is not suitable for the park or adequate disclosure is not made. However, this risk should be mitigated by the proposals set out in part 17.4 that will ensure that park operators are informed about a proposed sale and given the opportunity to make all necessary disclosures.
- Option C – Positive impact. Long-stay agreement may require that the park operator is appointed as the sole selling agent. Park operator will have control of sale process.

Home owners:

- Option A – Home-owners currently cannot be required to nominate the park operator as selling agent. However, it may be that home owners could still be required to appoint a person nominated by the operator. Confusion currently exists as to the operation of the legislative provisions. It appears that some home-owners believe that they are required to nominate the park operator as selling agent, despite the standard clause set out in the RPLT Regulations. The perceived lack of choice by home-owners can have significant financial consequences for tenants.
- Option B – Permits the home owner to either sell their own home or appoint a selling agent of their choice. Reduces potential for loss as a result of conflict of interest. Sets out a clear legislative requirement.
- Option C - In some instances home owners will be required to appoint the park operator as the sole selling agent. Limits choice for home-owners.

Renters

- This issue does not impact on renters.

Government:

- These options would have minimal impact on government.

Assessment against the objective

- Option A – Provides for transparency in relation to the appointment of a selling agent for the sale of a home. However some doubt currently that legislative requirements in relation to this are clear.
- Option B – Provides for transparency in relation to the appointment of a selling agent for the sale of a home and ensures that legislative requirements in relation to this are clear
- Option C – Does not provide for transparency in relation to the appointment of a selling agent for the sale of a home. Limits flexibility for tenants in relation to appointment of a selling agent.

17.7 COMMISSION FOR PARK OPERATOR ACTING AS SELLING AGENT

Issue

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

- there is a written agreement between the park operator and the tenant for the park operator to act as the selling agent;
- the commission to be paid, or the method of calculating the amount is specified in the selling agency agreement; and
- the home is sold as a result of the agency of the park operator under the selling agency agreement³⁹².

Concerns have been raised by tenants in relation to issues around selling agency fees as:

- despite the prohibition on doing so, long-stay agreements often specify that the park operator is to be the sole selling agent; and
- the selling agency fees are not clear until a selling agency agreement is entered into.

The fee payable to the park operator for acting as selling agent should be distinguished from any exit fee or other fee payable as a condition of exit from the park (see part 15 for further discussion on these fees). The selling agency fee is a fee paid for the service of selling the home. Exit fees are less quantifiable and are often justified as being fees paid for the value added to a home due to its location in the park or as consideration for lower rentals over the term of the lease. However, the legislative framework will need to take into account all fees payable on the sale of a home.

Objective

To provide for transparency and fairness in relation to selling agency fees, where a park operator is appointed by a home owner to sell a home.

Recommendation

Option A – (status quo) Fees payable on the sale of a home will continue to be specified in the selling agency agreement.

Statutory Review Report

Option A (status quo) was the preferred option in the Statutory Review Report.

Park operators would continue to be prevented from requiring the tenant to appoint them as the selling agent. This will mean that tenants have the capacity to shop around for optimal commission agreements.

Many agreements in residential parks can operate over a number of years and it would be unreasonable to require the parties, in these circumstances, to lock themselves into a stated commission arrangement many years prior to the act of selling the park home.

³⁹² RPLT Act – section 57

The report noted that, as part of the proposal, sales commissions would not be chargeable in addition to exit fees (as these are typically linked to the value of the home and its location and not to services provided). See recommendations at part 15.5.

The majority of stakeholder responses to the report supported retaining the status quo³⁹³; however two respondents supported Option B³⁹⁴.

Continuing the status quo recognises that many agreements in residential parks can operate over a number of years and it would be unreasonable to require the parties, in these circumstances, to lock themselves into a stated commission arrangement many years prior to the act of selling the park home.

Background

Similar to the RPLT Act, the New South Wales Act provides that any commission to be paid to a park operator must be specified in the selling agency agreement³⁹⁵. The Victorian Act requires that the commission must be disclosed in the site agreement³⁹⁶. In Queensland the parties must enter into a selling authority in the approved form and the commission cannot exceed the prescribed fee, which currently is:

- if the sale price of the manufactured home is not more than \$18,000—5 per cent of the sale price; or
- if the sale price of the manufactured home is more than \$18,000—\$900 plus 2.5 per cent of the part of the sale price over \$18,000³⁹⁷.

In Western Australia for general real estate sales by licensed real estate agents the sales commission is not a set amount, but is agreed between the parties. The commission can be a set fee or a percentage of the sale price. An agent cannot receive a commission unless it is specified in a written authority (signed by the seller)³⁹⁸.

C-RIS Proposals:

Option A – Status quo

No legislative change. Fees payable on the sale of a home to be specified in the selling agency agreement.

Option B – Selling agency fees to be specified in the long-stay agreement

Under this option, selling agency fees would be required to be specified in the long-stay agreement and disclosed to the home owner before they commence their tenancy.

³⁹³ Wolff, Cockerham, confidential operator, GG Corp, NLV, Fourmi Pty Ltd, Discovery Parks and CIAWA

³⁹⁴ Engwirda and PHOA

³⁹⁵ *Residential (Land Lease) Communities Act 2013* (NSW) – section 113

³⁹⁶ *Residential Tenancies Act 1997* (Vic) – sections 198, 183, 206ZZH and 206S

³⁹⁷ *Manufactured Homes (Residential Parks) Act 2003* (Qld) – sections 59- 62; *Manufactured Homes (Residential Parks) Regulation 2003* (Qld) – regulation 3

³⁹⁸ *Real Estate and Business Agents Act 1978* – section 60. It should be noted that section 61 of the *Real Estate and Business Agents Act 1978* makes provision for the setting of maximum fees and commissions payable to licensed agents; however maximum fees or commissions are currently not set. Fees were deregulated in 1998 and it is unlikely that this policy will change.

Option C – Selling agency fees limited to a specified percentage

Under this option, selling agency fees would be limited to a specified percentage, set out in the regulations. This could be set as a simple percentage, such as 5 per cent, or be set at a sliding scale with a lower percentage payable as the sale price increases (similar to the Queensland model). In setting a percentage, consideration would need to be given to any other fees payable on exit from a park (to ensure that the overall fees paid are fair and reasonable).

Option D – Selling agency fees limited to a specified amount

Under this option, selling agency fees would be limited to a specified amount, set out in the regulations.

Stakeholder views

	Survey responses				Written submissions			
	Option A	Option B	Option C	Option D	Option A	Option B	Option C	Option D
Tenants	9	6	18	10	-	1	3	-
Park operators	3	-	1		2	2	-	-
TOTAL	12 (26%)	6 (13%)	19 (40%)	10 (21%)	2 (25%)	3 (37.5%)	3 (37.5%)	-

Some operators supported Option A as it allows the parties to determine the appropriate fee at the time the selling agency agreement is entered into, taking into account the market conditions at that time³⁹⁹. One operator noted that it is very difficult to specify a selling agency fee at the time an agreement is entered into without knowing how long the resident will be at the park and what the specific circumstances will be at the time of sale⁴⁰⁰.

NLV supported Option B and stated that Options C and D are unduly restrictive and limit the fees chargeable by a park operator without limiting fees that an outside party might charge. Some operators were of the view that a one size fits all approach was not appropriate⁴⁰¹ or that it was not possible to set a single appropriate percentage⁴⁰².

Carine Gardens was of the view that if the long-stay agreement requires that the park operator be appointed as the selling agent, then it would be reasonable to require the fee to be specified in the long-stay agreement (Option B), but that if the home-owner is free to choose a selling agent that the fee should be negotiated at the time the selling agency agreement is entered into (Option A).

COTA also preferred Option B, with clear disclosure required at the time of entering into the contract.

³⁹⁹ Confidential operator; Riverside Gardens

⁴⁰⁰ Confidential operator

⁴⁰¹ NLV and Confidential operator

⁴⁰² NLV

PHOA was also of the view that the details of the commission should be clearly stated in disclosure material, but supported Option C. Other tenant representatives and tenants⁴⁰³ also supported Option C, arguing that a percentage commission gives the operator an incentive to get a good price for the property⁴⁰⁴. Suggested percentages range from 1 per cent to 5 per cent.

Some tenant respondents raised concerns about selling agency fees that had changed over time, for example, from 4 per cent to 10 per cent in the space of 3 years. These concerns would be alleviated if the selling fee were set at the time of entry into the contract.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Allows the parties to negotiate an appropriate fee structure at the time the selling agency agreement is entered into having regard to the value of the home and market conditions. • Provides flexibility for parties to determine what types of fees are appropriate in their circumstances – for example, percentage, set fee or hourly rate. 	<ul style="list-style-type: none"> • Home owner may have limited bargaining power in relation to negotiations over fees.
Option B – Selling agency fees to be specified in the long-stay agreement	<ul style="list-style-type: none"> • More transparency and certainty about selling agency fees. • Home owner is in a position to assess whether selling agency fees are acceptable at the point of entry into the contract. • Provides flexibility for parties to determine what types of fees are appropriate in their circumstances – for example, percentage, set fee or hourly rate. 	<ul style="list-style-type: none"> • Limits the flexibility of the parties to determine the appropriate scale of fees at the time of sale (taking into account value of home and market conditions).
Option C - Selling agency fees limited to a specified percentage	<ul style="list-style-type: none"> • More transparency and certainty about selling agency fees. • Limits potential for home owners to be required to pay onerous fees. • A percentage fee gives a park operator an incentive to obtain the best sale price. 	<ul style="list-style-type: none"> • Limits the flexibility of the parties to determine the appropriate fee structure for their circumstances. • A specified percentage fee may not be an accurate reflection of the work involved in selling a home.

⁴⁰³ Watt, Goldfields CLC

⁴⁰⁴ Some survey responses also supported this view

	Potential benefits	Potential disadvantages
Option D - Selling agency fees limited to a specified amount	<ul style="list-style-type: none"> • More transparency and certainty about selling agency fees. • Limits potential for home owners to be required to pay onerous fees. • May be viewed as a more accurate reflection of the work required in selling a home – the same amount of work is sometimes required regardless of the value of the home. • Fees could be adjusted from time to time to reflect market conditions. 	<ul style="list-style-type: none"> • Limits the flexibility of the parties to determine the appropriate fee structure for their circumstances. • It may be difficult to set an amount that is appropriate to all circumstances. • Unlike a percentage, a set fee does not offer an incentive to operators to obtain a higher sale price.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo means the parties have the flexibility to determine the selling agency fee at the time of entry into the selling agency contract. Selling fee can be determined based on market conditions.
- Option B – Positive impact. Greater certainty about selling fees. However, the parties may have difficulty in setting an appropriate fee at the time of entry into the contract as they are unable to assess the future market conditions.
- Option C – Negative impact. Limits flexibility for park operator in setting fees. A percentage fee may not be an accurate reflection of the work involved in selling a home.
- Option D – Negative impact. Limits flexibility. May not be an accurate reflection of the work involved in selling a home.

Home owners:

- Option A – Minimal impact. The parties have the flexibility to determine the selling agency fee at the time of entry into the selling agency contract. There is also some uncertainty for the tenant who may have limited bargaining power in negotiating the selling agency agreement.
- Option B – Positive impact. Greater certainty for tenants about selling agency fees. However, tenants may still have limited bargaining power in negotiations about the long-stay agreement.
- Option C – Positive impact. Greater certainty for tenants in relation to selling fees. May act as an incentive for park operators to obtain the best price possible for a home.
- Option D – Positive impact. Greater certainty for tenants in relation to selling fees. However, unlike a percentage, there is no incentive for park operators to obtain the best price.

Renters:

- This issue does not impact on renters.

Government:

- Option A and B – Minimal impact.
- Options C and D – Negative impact. Will require government to determine the appropriate percentage or set the selling fees and ensure that those fees remain appropriate.

Assessment against the objective

- Option A – Provides transparency in relation to selling agency fees at the time the agreement is negotiated. Tenants may have limited bargaining power at the time of negotiating a selling agency agreement. However, the market conditions can be taken into account at that time and tenants will be free to choose their selling agent.
- Option B – Provides greatest degree of transparency at the time of entry into the long-stay agreement. Permits a tenant to assess all potential fees at the commencement of the contract. However, limits flexibility to negotiate fees to suit market conditions at the time of sale. Given the length of some long-stay agreements, it will be very difficult for the parties to determine what would be an appropriate fee for a future date, for example, in 20 years' time.
- Option C – Provides transparency in relation to selling agency fees, but limits flexibility for the parties to negotiate fees.
- Option D - Provides transparency in relation to selling agency fees, but limits flexibility for the parties to negotiate fees.

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

Issue

In some instances, additional fees are payable on the sale of a home regardless of whether a park operator is acting as the selling agent or not. These sales fees are sometimes described as administration fees. These fees should be distinguished from exit fees (see part 15.5 of this paper) as they are fees for a service provided by the park operator.

The RPLT Regulations currently provide that when a tenant is selling their home on site, and the park operator is not the selling agent; the park operator may charge a fee for screening the suitability of a prospective purchaser⁴⁰⁵.

The discussion paper asked whether a park operator, who does not act as the selling agent, should be able to charge an administration fee for costs incurred in relation to the sale of a home.

Objective

Provide for park operators to recover reasonable administrative costs incurred in relation to the sale of a home.

⁴⁰⁵ RPLT Regulations – regulation 10 and schedule 8

Recommendation

Option B – park operators can recover reasonable costs incurred in relation to the sale of a home, including administration fees and other out of pocket expenses.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it permits recovery of all reasonable costs by a park operator.

All stakeholder responses to the report supported Option B⁴⁰⁶.

Background

C-RIS Proposals:

Option A – Status quo

No legislative change. No restrictions of the fees payable on the sale of a home.

Option B – Administration fees permitted, but limited to recovery of reasonable costs

Under this option, the park operator would be able to recover reasonable costs incurred in relation to the sale of a home, including administration costs and out of pocket expenses. The fees charged should be an accurate reflection of the time and expense involved in assisting with the sale of a home. The parties would have the right to make an application to the SAT in relation to any disputes about administration fees.

Stakeholder views

	Survey			Written submissions	
	Option A	Option B	Other	Option A	Option B
Tenants	5	32	8	-	5
Park operators	4	1	-	2	3
TOTAL	9 (18.0%)	33 (66.0%)	8 (16.0%)	2 (20%)	8 (80%)

The majority of support was for Option B.

Park operators state that they often spend considerable time liaising with and arranging agreements with purchasers and incur costs in vetting potential purchasers with regards to their suitability for the park. Operators were of the view that they should be able to recover the reasonable costs of this work. Most tenants accepted that park operators should be able to recover these costs, provided they were reasonable. Some tenants were of the view that no additional costs should be payable as it is in the park operator's interest to carry out screening processes.

⁴⁰⁶ Wolff, Cockerham, Engwirda, GG Corp, confidential operator, NLV, Fourmi Pty Ltd, Discovery Parks, PHOA and CIAWA

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">• Maintains flexibility for the parties to agree to fees payable.	<ul style="list-style-type: none">• Risk that home owners or purchasers may be required to pay onerous fees.
Option B – Administration fees permitted but limited to recovery of reasonable costs	<ul style="list-style-type: none">• More transparency and certainty about administration fees.• Allows park operators to recover reasonable costs.	<ul style="list-style-type: none">• May result in an increase in the number of applications to the SAT.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo means that park operators would be permitted to charge a fee for screening tenants, but may not be able to recover other administrative costs.
- Option B – Minimal impact. Allows a park operator to recover reasonable administrative costs in relation to a sale of a home.

Home-owners:

- Option A – Negative impact. Risk that home owners or purchasers may be required to pay onerous fees.
- Option B – Minimal impact. Tenants may be required to pay additional administrative costs, but these will be limited to the reasonable costs incurred by the park operator.

Renters:

- This issue has no impact on renters.

Government:

- These options would have minimal impact on government. There may be a minor increase in compliance costs in relation to Option B.

Assessment against the objective

- Option A –Permits recovery of costs for vetting a potential purchaser, but may not include other administrative costs.
- Option B – Permits the park operator to recover all reasonable administrative costs incurred in relation to a sale.

18 PARK OPERATOR CONDUCT PROVISIONS

While the majority of park operators treat residents fairly and comply with their legal obligations, a number of tenant respondents to the discussion paper indicated that some tenants felt bullied by park operators or were reluctant to speak out in relation to matters of concern for fear of retaliatory conduct on the part of the park operator, such as eviction or inequitable application of park rules. Other submissions indicated that, in some cases, tenants were of the view that park operators had engaged in misleading conduct or made misrepresentations in order to induce them to enter into a long-stay agreement. For these reasons this matter was included in the C-RIS for further consultation.

The ACL contains a number of provisions setting standards of conduct for traders or persons acting in trade or commerce. For example, a person is not permitted to engage in misleading or deceptive conduct, unconscionable conduct, harassment or coercion or make false or misleading representations. A broad range of remedies are able to be sought through the courts for breaches of these requirements, including the power to make orders for damages, compensation, varying a contract or declaring a contract void (in whole or part). The ACL also includes mechanisms by which unfair contract terms in standard contracts may be declared void.

Although the requirements of the ACL are applicable in relation to long-stay agreements in residential parks, the SAT, which determines disputes regarding long-stay agreements, does not currently have jurisdiction to consider whether the requirements of the ACL have been breached or to apply the remedies available under the ACL. Complaints regarding breaches of the ACL must be heard in the courts. If SAT is to have jurisdiction to consider conduct provisions under the ACL, the enabling legislation (the RPLT Act) would need to be amended to grant the SAT these powers.

Issue

Should the RPLT Act be amended to apply ACL standards of behaviour so as to enable the SAT to address complaints arising as a result of inappropriate conduct by park operators?

Objective

To set clear standards of behaviour for park operators and tenants and provide for adequate remedies between the parties if a breach of these standards occurs.

Recommendation

Option B – (with amendment) amend the RPLT Act to include ACL provisions in the Act to enable the SAT to consider conduct of a park operator when determining a dispute.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report as it provides an easier and more cost effective process for parties to enforce rights and obligations under the ACL.

The majority of stakeholder responses to the report supported Option B⁴⁰⁷, with those opposing it supporting continuation of the status quo⁴⁰⁸.

⁴⁰⁷ Wolff, Cockerham, Engwirda, Flegeltaub, GG Corp, Discovery Parks, PHOA and CIAWA

One park operator commented that it feared that residents may attempt to bully park operators by threatening to go to the SAT. Proceedings at the SAT can be costly and time consuming for an operator.

As a result of stakeholder feedback to the report, in implementing Option B the RPLT Act will also be amended to specifically provide that, in making any order for costs, the SAT may consider whether a party has acted frivolously or vexatiously in bringing or conducting proceedings.

Background

C-RIS Proposals:

Option A - Status quo

The ACL would continue to apply to residential park long-stay agreements independently of the RPLT Act. Any allegations of breach of ACL conduct provisions would need to be determined by the courts.

Option B – Include ACL provisions in the RPLT to enable the SAT to consider conduct of a park operator when determining a dispute

When determining a dispute under the RPLT Act, the SAT would be given the jurisdiction to consider the conduct of park operators and whether breaches of the standards set by the ACL have occurred.

The SAT would be able to consider whether a park operator has:

- made false or misleading representations;
- engaged in misleading or deceptive conduct;
- acted unconscionably; or
- engaged in harassment or coercion.

The power to consider these factors could be included by reference to the relevant provision of the ACL or by specific reference in the RPLT Act.

The remedies available to the SAT would also be broadened to ensure that the SAT has the power to make all necessary orders in order to deal with issues of this nature.

Stakeholder views

	Survey responses		Written submissions	
	Option A	Option B	Option A	Option B
Tenants	-	49	-	2
Park operators	3	2	3	2
Other	-	-	-	7
TOTAL	3 (5%)	52 (95%)	3 (21%)	11 (79%)

There was very strong support from both survey and submission respondents for Option B.

⁴⁰⁸ NLV, Fourmi Pty Ltd and confidential operator

Reasons given for supporting this option from the surveys included that it would stop the bullying of residents by park operators that is alleged to currently occur in residential parks and that it would give residents a user friendly and accessible means of challenging inappropriate conduct by park operators. One respondent to the survey noted that the SAT, as an independent party, would be unbiased and be able to see both sides of the situation while another pointed to the benefits of having one body (i.e. the SAT) deal with all disputes relating to residential parks rather than having breaches of ACL conduct provisions heard by a different court.

The written submissions also predominantly supported SAT being given powers to consider the conduct of park operators. Shelter WA noted that it would enable the SAT to make a better informed decision when determining a dispute between a tenant and a park operator. The CIAWA, Aspen Parks and Carine Gardens noted that park operators are already subject to conduct laws under the ACL and therefore there would be no additional burden for park operators if the SAT were able to take the ACL into account in respect of park operator conduct.

Some park operators were opposed to this proposal. National Lifestyle Villages noted that the current Act adequately regulates conduct. NLV also noted that conduct laws under the ACL were complex and therefore should be reserved for superior courts. However, it is noted that the SAT already has jurisdiction to hear complaints of unconscionable conduct and misleading and deceptive conduct under the *Commercial Tenancies (Retail Shops) Agreements Act 1985*⁴⁰⁹, and confirmed its expertise and experience to also hear such matters under the RPLT Act.

Riverside Gardens was of the view that the current practice of having the Commissioner take action against traders under the ACL was an appropriate safeguard to ensure that only matters with merit would proceed, and feared that the inclusion of ACL-type conduct provisions in the Act could lead to an increase in workload for the SAT with no real benefit for either party. Another park operator expressed concern that to include park operator conduct provisions in the Act could lead to residents bullying operators and threatening to take unjustified action against them.⁴¹⁰

Impact analysis

The following table outlines some potential benefits and disadvantages of the various options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> The parties are familiar with the current provisions and processes. 	<ul style="list-style-type: none"> Any allegation of a breach of the ACL conduct provisions are determined by the courts, not the SAT. Where a party seeks to enforce their rights under the ACL, this could result in a doubling up of procedures and increased costs to both parties and to government. Tenants may be deterred from pursuing action under the ACL.

⁴⁰⁹ Part IIA

⁴¹⁰ Confidential operator

	Potential benefits	Potential disadvantages
Option B – Give SAT power to take breach of ACL provisions into account	<ul style="list-style-type: none"> • The SAT will have the jurisdiction to consider all matters in determining a dispute between the parties, without the potential duplication of actions and increased legal costs that could result from a requirement to also commence proceedings in the courts. • May assist in resolving disputes at an earlier stage in proceedings. 	<ul style="list-style-type: none"> • May result in more applications being made to the SAT and therefore increased costs to the SAT. This however would likely be offset by a reduction in matters being commenced in the courts.

Impact on stakeholder groups

Park operators:

- Option A – Positive impact. Continuation of the status quo.
- Option B – Minimal impact. There should be no increase in costs for park owners and operators as they already have to comply with the ACL in the provision of residential park lease agreements. This option may result in a decrease in costs as action taken by either party could be fully determined in one forum rather than having to attend both the SAT and the court.

Home owners and renters:

- Option A – Negative impact. The involvement of the courts is likely to continue to see less home owners and renters enforcing their rights under the ACL.
- Option B – Positive impact. Home owners and renters would benefit in being able to bring complaints themselves to the SAT against residential park operators who they believe are in breach of the ACL conduct provisions. This would act as a deterrent to residential park operators engaging in unlawful conduct such as harassment, or misleading and deceptive conduct. This would result in the greater protection of residents' rights.

Government:

- These options would have minimal impact on government. Option B could result in more applications being made to the SAT and therefore increase costs of the SAT; however this would likely be offset by a reduction in ACL matters being referred to the courts for determination.

Assessment against the objective

- Option A – Continues to set standards for park operators and tenants through the ACL; however fails to meet the objective of providing adequate remedies for the parties if a breach of standards occurs as any remedies must be pursued through the court system rather than through the SAT which is more costly and less user friendly.
- Option B – Provides a clear statement as to conduct for park operators and tenants through linking the ACL to the RPLT Act and also provides for easier and more cost effective access to remedies if a breach of these standards occurs by enabling the SAT to determine claims of breaches of conduct.

19 PARK LIAISON COMMITTEES

The RPLT Act currently provides that a park operator must take all reasonable steps to establish and maintain a park liaison committee (PLC) in parks with 20 or more long-stay sites⁴¹¹. The PLC is an advisory and consultative body to consider matters such as the preparation and amendment of park rules and the development of park policies. The PLC also assists the operator to ensure park rules are observed and to resolve disputes⁴¹².

A mandatory PLC for all parks was considered in the discussion paper, however this option was not considered reasonable following feedback about the difficulty in obtaining and maintaining representation in smaller parks and the relative ease in approaching an operator individually. Accordingly, Option B outlines an alternative option of a majority tenant support for a PLC.

Objective

To ensure that tenants living long-term on a park have access to an appropriate forum to discuss tenancy matters, at an individual level and park level, to promote harmony and minimise disputes.

Recommendation

Option B – that the requirement for a park operator to establish a PLC in a park with 20 or more long-stay sites, continue to apply, but subject to the majority of tenants supporting a PLC. Procedures for nomination and election of tenant representatives, as well as procedures for the running of a PLC, could be prescribed by regulation. Disputes will be able to be determined by the SAT.

Statutory Review Report

Option B was the preferred option in the Statutory Review Report; however it was proposed that the requirement to hold an establishment meeting every five years would be removed, as it would be a continuing obligation imposed on park operators to establish a PLC if a majority of tenants want one.

The report also proposed that the following additional requirements be included:

- that park operators and managers not unduly interfere in the PLC election process; and
- nothing in the Act is to be taken to prohibit tenants from forming any social or other committee; however these committees cannot usurp the role of the PLC.

The nomination, election and other procedures for PLCs would be subject to further consideration in the consultation process for the development of the regulations.

The majority of stakeholder responses to the report supported Option B⁴¹³. Two respondents opposed Option B⁴¹⁴. These operators raised concerns about reduced flexibility arising from more prescriptive procedures, but did support the concept of only requiring a PLC if its establishment is supported by a majority of tenants.

⁴¹¹ RPLT Act – section 59

⁴¹² RPLT Act - section 61

⁴¹³ Wolff, Cockerham, Engwirda, Flegeltaub, NLV, Fourmi Pty Ltd and PHOA

⁴¹⁴ GG Corp and confidential operator

A number of respondents, including CIAWA and PHOA, were supportive of inclusion of more prescriptive mechanisms around the establishment of PLCs, as this would provide certainty to both operators and tenants.

Option B remains the preferred option; however it will be clarified that the requirement concerning a 'majority of tenants' relates to all tenants in the park, and not a majority of tenants voting. It is proposed that the 30 per cent threshold will be used, but this issue will be monitored following implementation and revised if necessary.

The nomination, election and other procedures for PLCs will form part of the consultation process for the development of the regulations.

Background

The *Residential (Land Lease) Communities Act 2013* (NSW) does not provide for mandatory park liaison committees. In Queensland, the PLCs have a specific function, which is to deal with objections that tenants have when a park operator wants to change park rules.

C-RIS Proposals:

Option A – Status quo

A park operator must take all reasonable steps to establish and maintain a PLC in parks with 20 or more long-stay sites.

The PLC is an advisory and consultative body to consider matters such as the preparation and amendment of park rules and the development of park policies. The PLC also assists the operator to ensure park rules are observed and to resolve disputes.

While the number of, or selection method, for PLC representatives is not prescribed, the RPLT Act requires that:

- the PLC consists of both tenant and park operator representatives;
- the tenant representatives are chosen by other long-stay tenants; and
- there must be more tenant than park operator representatives.

Option B – Mandatory PLC (20 or more sites) with more detailed procedures

Under this option, the park operator would still be required to establish a PLC in a park with 20 or more long-stay sites, but subject to the majority of tenants supporting a PLC. Park operators would be required to hold an establishment meeting every five years, or whenever tenants can demonstrate that 30 per cent of long-stay tenants want a meeting, to consider whether the majority of long-stay tenants support the establishment of a PLC.

The procedure for nomination and election of tenant representatives, as well as procedures for the running of a PLC, could be prescribed by regulation.

If there is a dispute about the selection of tenant representatives on a PLC, or procedures relating to the running of a PLC that are prescribed (if any), a resident or a park operator could apply to the SAT to determine the matter.

Stakeholder views

	Survey responses		Written submissions	
	Option A	Option B	Option A	Option B
Tenants	44	4	-	6
Park operators	10	1	6	-
Other	-	-	-	1
TOTAL	54 (92%)	5 (18%)	6 (46%)	7 (54%)

Consistent with responses to the Discussion Paper, there was a general view that not all residential parks need a PLC and that PLCs should not be mandatory.

PHOA stated that in some parks tenants may be content with the way the park is run, or age or ability to enter into a group activity may prohibit their involvement in a PLC. Goldfields CLC stated that isolated parks in the Goldfields struggle to obtain members due to lack of numbers of long-stay tenants.

The submission and surveys from park operators generally supported Option A. One park operator stated that although it did not support Option B, the proposal to include a majority vote to decide whether a PLC was necessary would be a positive step as some tenants find PLCs divisive and do not want them.

Tenant surveys had differing views from tenant submissions, with the majority of survey responses supporting Option A, whereas the majority of submissions support Option B. This outcome may have been influenced by the tendency for written submissions to be provided by tenant advocates and PLC co-ordinated submissions.

Several tenant submissions were of the view that PLCs should have greater powers with mechanisms for penalising park operators who did not deal with the concerns raised by tenants.

Although PHOA called for the clarification of a range of PLC issues in the legislation consistent with Option B, it considered that various requirements to ensure tenants have the right to form a PLC without management interference were also essential. PHOA was of the view that the formation of a PLC should not prohibit residents meetings, and suggested that there should be no minimum or maximum number of PLC meetings each year.

However, failure by management to meet with the PLC for a period exceeding six months should be a reason to appeal to the Department for intervention and conciliation. The SAT could then be a last resort if a resolution is not reached. It is noted that constraining tenants from lodging complaints with the Department would not be appropriate.

The Consumer Advisory Committee was of the view that Option B would provide greater transparency and equity between tenants and park operators. The Consumer Advisory Committee supported the proposal⁴¹⁵ that mixed-use parks should have a PLC with a mix of representatives of different tenancy types. No other submissions responded to this issue.

⁴¹⁵ See issue 21(c) in the Consultation RIS – page 148

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none">• The parties are familiar with the status quo.	<ul style="list-style-type: none">• There may be disputes about the establishment of a PLC, particularly if establishment process is unclear.• There may be disputes about the selection of tenant representatives.• Long-stay tenants and/or the park operator may not be interested in establishing a PLC on the park.
Option B – Mandatory PLC (20 or more sites) with more detailed procedures	<ul style="list-style-type: none">• Retains core aspects of the current PLC process.• Having a regulated process for the establishment of a PLC and selection of tenant representatives may reduce disputes.• The operator would be able to demonstrate attempted compliance with the provisions through the minutes of an establishment meeting/s if an eligible park does not have a PLC.	<ul style="list-style-type: none">• Parties will need to familiarise themselves with the new requirements.• Operators would need to organise an establishment meeting once or periodically, depending on whether the park adopts a PLC, which takes time out from dealing with other park business.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Minimal impact. Continuation of the status quo. However, there may be disputes about whether the park operator has taken all reasonable steps to establish a PLC in residential parks with 20 or more sites. Further, the park operator and majority of tenants may not want a PLC but are required to have one.
- Option B – Positive impact. A PLC will not have to be formed unless a majority of tenants vote for it at an establishment meeting held every five years, or where tenants can demonstrate that 30 per cent of long-stay tenants want an establishment meeting. However, compliance required with procedures for establishment meeting, tenant nomination, election and operation of the PLC. Tenants may appeal to the SAT about PLC process.

Home owners:

- Option A – Minimal impact. Continuation of the status quo. However, the majority of tenants may not want a PLC but will still be required to have one.

- Option B – Positive impact. No need for representation on the PLC unless 30 per cent or more of tenants call for an establishment meeting. Clarification and standardisation of requirements and procedures for tenant nomination, election and operation of the PLC will provide a clearer understanding of rights and obligations.

Renters:

- It is expected that these options would have minimal impact on renters.

Government:

- Option A – Minimal impact. Continuation of the status quo.
- Option B – Minimal impact. Applications to the SAT may increase regarding park operator's compliance with PLC establishment meeting and procedures.

Assessment against the objective

- Option A – Ensures tenants living long-term on a park have access to an appropriate forum to discuss tenancy matters.
- Option B – Ensures tenants living long-term on a park have access to an appropriate forum to discuss tenancy matters. Reduces red tape in that a PLC is not required to be formed unless a majority of tenants vote for one.

20 DISPUTE RESOLUTION

Issue

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

Objective

Ensure that the SAT has adequate powers to deal with any issues arising under the RPLT Act.

Recommendation

Include a head of power for the SAT to declare a provision in a long-stay tenancy agreement void if it is satisfied the term is harsh or unconscionable.

Statutory Review Report

The Statutory Review Report recommendation was to adopt the approach in Victoria and South Australia by amending the RPLT Act to specifically include a head of power for the SAT to make an order varying a long-stay agreement or declare a provision in a long-stay agreement invalid if it is satisfied the term is harsh or unconscionable.

The majority of stakeholder responses to the report supported the recommendation⁴¹⁶. Four respondents opposed the recommendation⁴¹⁷, with one large park operator concerned that the SAT would have the power to re-write the agreed terms of the long-stay agreement which could make the terms of all of their tenancy agreements uncertain.

In response to stakeholder feedback to the report, it is proposed that SAT not have the power to vary an agreement, but retain the power to declare a provision void. This would ensure consistency with the principles applicable under the ACL. It is noted that the SAT would only make an order in the situation where a provision is harsh or unconscionable – it is not expected that this would have broad application.

Background

The SAT has the jurisdiction to resolve disputes that arise under the RPLT Act. The powers of the SAT are set out in the RPLT Act and the *State Administrative Tribunal Act 2004* (SAT Act). A party to a long-stay agreement, an agreement for an option to enter into a long-stay agreement or a selling agency agreement may apply to the SAT for relief if a breach of the agreement has occurred or any other dispute has arisen under or in connection with the agreement. The SAT has the power to give directions and make such orders as it considers appropriate⁴¹⁸.

The powers of the SAT under the RPLT Act are largely consistent with the powers vested in tribunals in other jurisdictions.

⁴¹⁶ Wolff, Izzard, Cockerham, Engwirda, Discovery Parks, PHOA and CIAWA

⁴¹⁷ Confidential operator, GG Corp, NLV and Fourmi Pty Ltd

⁴¹⁸ RPLT Act, section 62

However, the legislation in South Australia and Victoria also include a power for the relevant tribunal to declare invalid or vary a term of an agreement if it is satisfied that the term is harsh or unconscionable⁴¹⁹.

Stakeholder views

While the survey did not address this issue, the C-RIS did ask stakeholders to comment in their written submissions on whether the SAT should be given specific powers to make an order varying a long-stay agreement or to declare a provision in a long-stay agreement invalid in appropriate circumstances.

C-RIS Proposals:

	Written submissions	
	Support	Not support
Tenants	-	-
Park operators	-	3
Other	3	-
TOTAL	3	3

Tenant representative groups were in favour of the proposal. The Goldfields CLC noted that the inclusion of these powers would enable greater protection for tenants and home owners while ensuring that the relevant regulatory requirements are specified so that park operators are aware of their responsibilities. The Goldfields CLC suggested that the SAT's exercise of these additional powers should be confined to where it can be demonstrated that:

- false or misleading representation has been made by either party;
- misleading or deceptive conduct has been engaged in by either party;
- either party has acted unfairly;
- the park operator has engaged in harassment or coercion; or
- the park operator failed to give full disclosure at the time of entering into the long-stay agreement.

In its submission, PHOA stated that the SAT should have the power to rule on any situation whereby contracts have been interfered with after the tenant has signed.

The Consumer Advisory Committee also supported the proposal, noting that the additional powers replicate the power of the SAT in relation to building contracts which it acquired in 2012.

⁴¹⁹ *Residential Tenancies Act 1997* (Vic) – sections 144A and 206G; *Residential Parks Act 2007* (SA) – section 45

Park operators did not support the proposal, with the consensus being that the SAT already has sufficient powers. In its submission, NLV stated that the SAT should not be granted a power to vary contracts, or declare individual provisions of a contract void as-

“...to do so is to effectively give SAT the power to re-write the terms of the contractual agreements between operators and tenants, which will make the terms of all tenancy contracts uncertain. This will negatively impact operators’ ability to plan and obtain finance. It will also effectively make SAT a body that sets contract terms, rather than determining disputes.”

The SAT has advised that the powers proposed are generally within the range of powers exercised and decisions made by it under other legislation which confers jurisdiction on the SAT. Therefore, subject to any potential resource implications, the SAT would have the expertise and ability to exercise any such powers.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – no change	<ul style="list-style-type: none"> • Likely that the SAT’s existing powers are already sufficiently broad enough to enable it to make an order to vary the terms of a long-stay agreement or to declare a provision in a long-stay agreement invalid. 	<ul style="list-style-type: none"> • Park operators and tenants may not be aware that the SAT can vary a long-stay agreement or declare a provision in a long-stay agreement invalid.
Option B – SAT be given specific powers to make an order varying a long-stay agreement or to declare a provision invalid	<ul style="list-style-type: none"> • It would be clear that the SAT may make an order to vary the terms of a long-stay agreement or declare a provision in a long-stay agreement invalid. 	<ul style="list-style-type: none"> • None discernible.

The potential impacts of the various options on each stakeholder group are as follows:

Park owners:

- Minimal impact. However, an increased understanding of the SAT’s powers may result in more disputes being taken to the SAT for determination.

Home-owners and renters:

- Minimal impact. Tenants will have a better understanding of the types of orders available to the SAT.

Government:

- Minimal impact. However, increased awareness of the SAT's powers may result in more disputes going before it for determination.

Assessment against the objective

While the power to vary a long-stay agreement or declare one of its provisions invalid may already exist within the SAT's current powers to make such directions and orders as it considers appropriate, their specific inclusion should assist the parties to better understand the orders that the SAT may make when determining a dispute. Together with the inclusion of ACL Standards of behaviour (part 18), the clarification of the SAT's powers in this area should act as a deterrent to the inclusion of terms in a long-stay agreement that would otherwise be considered unconscionable.

21 SEPARATE REGULATION OF LIFESTYLE VILLAGES

Issue

For people who wish to commit to the park lifestyle for an extended period of time, lifestyle villages (including long fixed term leases in park home parks) are often considered as the most appropriate option as they offer long fixed term tenancies (of up to 30 years or more), and in many instances, access to resort style facilities. However, information collected via the park operator survey reveals that lifestyle villages are not the only option favoured by those looking for a long-term tenancy. The results indicate that home owners are divided relatively evenly between mixed-use parks and lifestyle villages. Although home-owners in lifestyle villages often pay more for their homes, with prices up to \$450,000, the home prices in mixed-use parks can also be fairly significant, with some park operators reporting that homes were selling for up to \$270,000. The survey also revealed that a number of mixed-use parks have also developed a separate section of the park to be used as a 'lifestyle village', with these parts of the park marketed separately and aimed at the over 45 sector.

In some other jurisdictions, lifestyle villages are regulated separately to mixed-use parks, either under separate legislation⁴²⁰ or through use of specific sections in the relevant legislation⁴²¹.

The C-RIS raised the issue of whether lifestyle villages were a sufficiently distinct tenancy option from mixed-use parks so as to necessitate the introduction of specific provisions in the RPLT Act to address tenancy arrangements in those parks.

Objective

To ensure that the RPLT Act addresses the nature of tenancies in lifestyle villages and park home parks, particularly taking into account the often significant costs associated with entering into a tenancy and the long lease terms that are granted.

Recommendation

Option A – (status quo) the RPLT Act not be amended to include provisions that only apply to lifestyle villages and park home parks.

Statutory Review Report

Option A was the preferred option in the Statutory Review Report.

An assessment of the various provisions of the RPLT Act revealed that the more critical issue in delivering appropriate levels of protection relative to financial outlay by the tenant is whether the tenant is a home owner versus a renter, not whether they live in a mixed-use park, a park home park or a lifestyle village. Therefore, the report recommended against amending the RPLT Act to provide different provisions targeted at lifestyle villages and park home parks.

⁴²⁰ *Manufactured Homes (Residential Parks) Act 2003* (Qld); *Residential (Land Lease) Communities Act 2013* (NSW)

⁴²¹ *Residential Tenancies Act 1997* (Vic)

The proposals suggested in part 10.3 (termination of tenancy on the sale of the park requiring vacant possession) and part 10.4 (impact of park insolvency-mortgagee possession) should ensure that where a long fixed term lease is paid for in terms of the value of the premises, that lease will be honoured for the entirety of its term. Those proposals will provide greater certainty of contract to those tenants on long fixed term leases, irrespective of what kind of park they live in.

The majority of stakeholder responses to the report supported a continuation of the status quo⁴²², with only one respondent opposing it⁴²³.

The status quo remains the preferred option as no evidence has been provided to justify distinguishing between lifestyle villages/park home parks and other residential parks.

Stakeholder views

The C-RIS requested feedback on amending the RPLT Act to include provisions that apply only to lifestyle villages and park home parks (i.e. those parks that offer long-term residential accommodation only).

	Survey responses			Written submissions	
	Amend RPLT Act	No Amendment	No view	Amend RPLT Act	No Amendment
Tenants	4	52	13	-	2
Park operators	5	-	1	3	1
Other	-	-	-	1	2
TOTAL	9 (12%)	52 (69%)	14 (19%)	4 (44%)	5 (56%)

The majority of tenant respondents to the C-RIS were of the view that the RPLT Act required amendment to include specific provisions for lifestyle villages and park home parks. The overwhelming rationale given by tenants for this response was that accommodation in lifestyle villages and park home parks were often more expensive, due largely to the perceived security of tenure afforded by the long lease. Tenant respondents were firmly of the view that where a long term fixed term lease is paid for in terms of the value of the premises, that lease should be honoured for the entirety of its term.

CIAWA, although speaking against having separate rules for lifestyle villages and park home parks, did state that if contracting out was to be prohibited by the RPLT Act in future, then consideration should be given to allowing some contracting out in the smaller mixed-use parks to allow the flexibility that is required to manage both holiday and long-stay sites. CIAWA also acknowledged that there is some merit in having separate rules for park home parks and lifestyle villages if this could mean having less regulation for smaller mixed-use parks.

⁴²² Wolff, Izzard, Cockerham, confidential operator, GG Corp, NLV, Fourmi Pty Ltd, Discovery Parks, PHOA and CIAWA

⁴²³ Engwirda

Almost all park operators that answered this question were opposed to having specific provisions, such as those outlined in Option B included in the RPLT Act that would apply only to lifestyle villages and park home parks.⁴²⁴ Their primary concern was that additional rules may make the business model of a residential park or lifestyle village economically unviable and lead to a reduction in the amount of finance available to develop new parks.

In addition to this, NLV stated that it was important for the same rules to apply to all residential parks in order to be equitable and ensure that competition within the industry remains fair. In respect of the issue of memorials over the land, NLV noted that the memorial system used in the retirement village sphere is utilised to protect the ranking of residents as compared to financiers if the need arose to recover their entry fees. NLV stated that as long-stay tenants do not pay an entry fee, there is no justification for a memorial to be placed on the land.

It is important to note, however, that this is not the only purpose of a memorial over the land of a retirement village. A memorial acts as a flag to third parties that the land is used for the purpose of a retirement village scheme and that the land cannot be used for an alternate purpose unless the scheme is terminated by order of the Supreme Court.

Impact analysis

The following table outlines some potential benefits and disadvantages of the options.

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • All park operators and long-stay tenants are treated the same under the RPLT Act – level playing field. • Recognises that home owners are divided relatively evenly between mixed-use parks and lifestyle villages. 	<ul style="list-style-type: none"> • In the absence of other measures to provide certainty of contract, long-stay tenants who outlay more financially to obtain a tenancy in a lifestyle village or park home park would have no greater protection of their tenure than someone who generally paid less to move into a mixed-use park.

⁴²⁴ Aspen, NLV, Confidential operator

	Potential benefits	Potential disadvantages
Option B – Amend the RPLT Act to make specific provision for lifestyle village parks	<ul style="list-style-type: none"> • Long-stay tenants in a lifestyle village afforded greater protection proportionate to their greater financial investment. 	<ul style="list-style-type: none"> • Would introduce a graded level of protection whereby tenants on long fixed term agreements in mixed-use parks would not be entitled to protections afforded to tenants in a similar position in lifestyle villages. • Difficulties in defining what is a 'lifestyle village', especially given the variety of parks in operation (i.e. some park home parks and mixed-use parks include sections of the park that are referred to as a lifestyle village). • Having specific lifestyle village provisions may impact on the flexibility of those park operators to use their land as they see fit. • May have an impact on the extent to which financiers are willing to invest in lifestyle villages.

The potential impacts of the various options on each stakeholder group are as follows:

Park operators:

- Option A – Positive impact. Continuation of the status quo.
- Option B – Negative impact. No level playing field. Competition within the industry would no longer be fair if the same rules do not apply to all residential parks. Would also impose a greater regulatory burden on operators of mixed-use parks and park home parks that have a dedicated lifestyle village section, as each section would be subject to different regulation.

Home owners

- Option A – Positive impact. Home owners in mixed-use parks and lifestyle villages are treated the same in recognition of the fact that they are divided evenly between the two types of parks.

However, in the absence of other certainty of contract measures, home owners in lifestyle villages and mixed-use parks will still not be afforded protection commensurate with their higher financial outlay.

- Option B – Negative impact. Would provide greater protection for tenants in lifestyle villages, however such measures may result in fewer long-stay agreements, or shorter long-stay agreements being made available in these parks. Further, tenants in mixed-use parks would not be provided with any additional protection despite the cost of homes in mixed-use parks being quite significant.

Renters:

- Option A and B – Minimal impact for renters from either option as lifestyle villages tend to only offer site-only rentals.

Government:

- Option A – Minimal impact. Continuation of the status quo.
- Option B – Negative impact. The government would be criticised for interfering in the operation of the market by introducing greater protections for a particular subset of residential parks and not others without it demonstrating that there is a clear need for distinguishing between the two arrangements.

Assessment against the objective

- Option A – On reviewing the individual provisions within the RPLT Act, it has become clear that the more relevant issue in delivering better targeted protections to tenants is whether the tenant is a home owner or a renter, not whether the tenant resides in a mixed-use park or a park home park or lifestyle village. In this context, Option A meets the objective, especially if it is coupled with other certainty of contract proposals detailed elsewhere in this paper (see parts 10.3 and 10.4).
- Option B – Fails to ensure that home owners in lifestyle villages and mixed-use parks are both protected commensurate with their higher financial outlay.

22 IMPLEMENTATION AND EVALUATION STRATEGY

22.1 IMPLEMENTATION

Implementation of a number of the options for change will require the drafting, and approval by the Parliament of amendments to legislation, principally the RPLT Act, with other changes to be implemented through amendments to the RPLT Regulations.

In undertaking changes to the RPLT Regulations, a wholesale review of the prescribed agreements and disclosure material will be undertaken, with a view to updating the documents to:

- reflect changes made to the legislation as a result of the review;
- implement other changes proposed by this review; and
- improve clarity of the documents.

Definitions in the RPLT Act will be amended to improve clarity and make sure they remain relevant into the future. For example, the definition of ‘residential park’ will be amended to ensure that the application of the RPLT Act will continue regardless of any changes that may, in the future, be made to the CPCG Act. The RPLT Act will also be amended to replicate recent amendments to the Residential Tenancies Act where appropriate (see Appendix B for proposed amendments). Some key rights and obligations of the parties are currently included in the prescribed agreements without an equivalent provision in the RPLT Act itself. It is proposed that the legislative scheme be reviewed with a view to ensuring that key obligations are set out in the RPLT Act itself rather than the subsidiary legislation.

Transitional issues will be carefully considered and appropriate lead in times for implementation of the changes will be determined in consultation with stakeholders.

A community education and advice campaign will be developed and implemented in conjunction with the proposed legislative amendments. Some possible initiatives could include:

- an education campaign to advise of the amendments;
- revised and updated information on the Department’s website;
- development of a handbook for operators to assist in compliance with the RPLT Act; and
- revision of the current Commissioner’s guidelines for tenants.

Administrative changes will also be made to implement changes. For example, a simplified bond process will be introduced to complement recommended changes.

22.2 EVALUATION

The effectiveness and impact of proposed changes will be monitored and a post implementation review will be undertaken at the Minister’s discretion. The RPLT Act does not impose ongoing timeframes for statutory reviews following this initial five year review. However, the Department will monitor disputes and concerns in relation to the implementation of the changes proposed in this paper. This information and feedback from stakeholders will be used to identify any issues in the sector that may necessitate further review or reviews.

APPENDIX A

LIST OF SUBMISSIONS TO C-RIS

Tenants and their representatives		
1	Park Home Owners Association Inc.	PHOA
2	Shelter WA	Shelter WA
3	Goldfield's Community Legal Centre	Goldfields CLC
4	Western Australian Council of Social Services	WACOSS
5	Council of the Ageing	COTA
6	Tenancy WA	Tenancy WA
7	John and Val Simpson	Simpson
8	Terry Izzard	Izzard
9	Carol Hammond	Hammond
10	David (no surname provided)	David
11	Kathleen Caris	Caris
12	Noel Hunt	Hunt
13	Betty and Martine Tullett	Tullett
14	Simon Watt	Watt
15	David and Maureen Mather	Mather
16	Jim Cusack	Cusack
17	RE and GA Tindall	Tindall
18	Bill Raven	Raven
19	Confidential submission	Confidential tenant A
20	Confidential submission	Confidential tenant B
21	Carine Gardens Estate – joint submission of tenants	Carine Gardens Tenants
Park operators and their representatives		
22	Caravan Industry Association Western Australia Inc.	CIAWA
23	Caravan Industry Association of Australia	CIAA
24	National Lifestyle Villages	NLV
25	Michael Hayes	Hayes
26	Fourmi Pty Ltd (Riverside Gardens Estate)	Riverside Gardens
27	Carine Gardens Caravan Park	Carine Gardens
28	Aspen Parks and Resorts	Aspen
29	Discovery Parks	Discovery
30	Mandurah Gardens Estate	Mandurah Gardens
31	Mandurah Caravan and Tourist Park	Mandurah Caravan
32	Confidential submission	Confidential operator
Government		
33	Department of Regional Development	Department of Regional Development
34	State Administrative Tribunal	SAT
35	Department of Housing	Department of Housing
Other		
36	Jo Davey (designer)	Davey
37	Australian Property Institute (WA Division)	API
38	Consumer Advisory Committee	Consumer Advisory Committee

APPENDIX B

LIST OF SUBMISSIONS TO STATUTORY REVIEW REPORT

Tenants and their representatives		
1	Park Home Owners Association Inc.	PHOA
2	Shelter WA	Shelter WA
3	Goldfield's Community Legal Centre	Goldfields CLC
4	Terry Izzard	Izzard
5	Jennifer Engwirda	Engwirda
6	Noel Hunt	Hunt
7	Clem Herrmann	Herrmann
8	John Ransom	Ransom
9	T & S Cockerham	Cockerham
10	Barbara Wolff	Wolff
11	John Flegeltaub	John Flegeltaub
Park operators and their representatives		
12	Fourmi Pty Ltd (Riverside Gardens Estate)	Riverside Gardens
13	National Lifestyle Villages	NLV
14	Discovery Parks	Discovery Parks
15	Caravan Industry Association of Western Australia	CIAWA
16	Michael Hayes	Hayes
17	Confidential submission	Confidential operator
18	G & G Corp Pty Ltd (Banksia Tourist Park & Belvedere Caravan Park)	GG Corp
Government		
19	Housing Authority of Western Australia	Housing

APPENDIX C

COMPARISON OF THE RPLT ACT AND THE RESIDENTIAL TENANCIES ACT

	RPLT ACT		RESIDENTIAL TENANCIES ACT	COMMENT
	Home owners	Park renters	Renters	
Information for prospective tenants	<p>Prior to entering into long-stay agreement the tenant must be provided with:</p> <ul style="list-style-type: none"> • a copy of the proposed agreement; • a copy of the information booklet on park living prepared by the Commissioner; • a written schedule of fees and charges; • a property condition report; • a copy of the park rules; • information about the park liaison committee (if any); • a copy of the prescribed information sheet; and • particulars of any restrictions or conditions imposed directly or indirectly under a written law that could affect: <ul style="list-style-type: none"> – the sale of the prospective tenant's relocatable home on site; or – any proposed assignment of the prospective tenant's rights under the long-stay agreement. <p>Park operator to also disclose details of any person having superior title and the park operator's licence under the CPCG Act.</p>		<p>Prior to entering into written tenancy agreement the tenant must be provided with:</p> <ul style="list-style-type: none"> • an information statement (this sets out key information about a person's rights and obligations under the Residential Tenancies Act) • a copy of the residential tenancy agreement • a property condition report; and • a bond lodgement form (if required) <p>For non-written tenancy arrangements – the documents must be provided within 14 days after tenant takes possession.</p>	The additional disclosure material required under the RPLT Act is specifically tailored for residential parks.
Form of agreement	<p>Long-stay agreements must be in writing and contain specified provisions. Do not necessarily need to be in the prescribed form.</p> <p>RPLT Regulations set out four standard agreements (Tailored for the different types of residential park tenancies.</p>		<p>Tenancy agreements do not necessarily need to be in writing, but a written tenancy agreement must be in the prescribed form.</p> <p>One prescribed form is used for all types of tenancies.</p>	
Contracting out	<p>Currently permits the parties to a long-stay agreement to contract out of certain prescribed rights and responsibilities upon agreement by both parties.</p>		<p>No contracting out permitted from 1 July 2013.</p>	<p>See part 7.1- It is recommended that the RPLT Act be amended to prohibit contracting out.</p>

	RPLT ACT		RESIDENTIAL TENANCIES ACT	COMMENT
	Home owners	Park renters	Renters	
Cooling off	Cooling off period applies in relation to site only agreements.	Not applicable.	No cooling off periods applicable.	
Fees payable under the lease	Long-stay tenants may be required to pay fees in addition to rent including: <ul style="list-style-type: none">• letting fees;• the costs of preparing the agreement;• visitors fees;• exit fees;• gardening fees;• storage fees;• air conditioning maintenance; and• gutter cleaning.		Only fees payable are rent and bond.	See part 15.2- It is recommended that park operators be prohibited from passing on the costs of preparing the agreement. See part 15.5– It is recommended that specific regulation be included in the RPLT Act in relation to exit fees. It is proposed that the RPLT Act also be amended to prohibit the charging of letting fees.
Rates, taxes and charges	Park operator must pay all rates, taxes, charges in respect of leased premises and shared premises charged under: <ul style="list-style-type: none">• <i>Land Tax Act 2002</i>;• <i>Local Government Act 1995</i>;• <i>Water Services Act 2012</i> (except for water consumed) This requirement may be varied by agreement.		Lessor must pay all rates, taxes, charges in respect of leased premises charged under: <ul style="list-style-type: none">• <i>Land Tax Act 2002</i>;• <i>Local Government Act 1995</i>;• <i>Water Services Act 2012</i> (except for water consumed) A contribution levied on a proprietor under the <i>Strata Titles Act 1985</i> section 36 cannot be passed on to a tenant.	See part 7.1 – it is recommended that the RPLT Act be amended so that the requirement for an operator to pay rates and taxes cannot be varied. It is proposed that the RPLT Act also be amended to include a reference to strata fees for consistency with the Residential Tenancies Act.
Rent variation	Market rent reviews currently permitted.		Market rent review not permitted.	See part 14.2– It is recommended that the RPLT Act be amended to provide that market reviews no longer be permitted.

	RPLT ACT		RESIDENTIAL TENANCIES ACT	COMMENT
	Home owners	Park renters	Renters	
Public utilities	Park operator may pass on charges for electricity, water and gas consumed by a tenant if the tenant has a separate meter.		Where a utility account is in the name of the lessor and the lessor wants to pass a charge on to the tenant, can only do so if: <ul style="list-style-type: none"> • charge relates to consumption only; and • if premises are separately metered, a copy of the account is provided to the tenant; or • if the premises are not separately metered, the lessor and tenant have agreed in writing as to the means by which the master account will be divided and a copy of the master account details, plus the calculations, is provided to the tenant. 	
Dealing with shared facilities	Contains provisions to deal with shared facilities.		No express provisions to deal with shared facilities.	
Children	In some circumstances a park may exclude residents with children - such as lifestyle villages for persons over 45.		Discrimination against tenants with children is not permitted.	Given the nature of lifestyle villages it is appropriate that restrictions in relation to children be in place in some circumstances, provided the restrictions are applied to all tenancies in a park.
Park rules	Sets out matters to be dealt with in park rules and procedures for amendment of those rules.		Not applicable.	
Park liaison committee	The RPLT Act provides for the establishment and functions of park liaison committee for parks with 20 or more long-stay sites.		Not applicable.	This provision may need to be modified in relation to strata parks to account for the different nature of the relationship between a strata company and the residents of the park.

	RPLT ACT		RESIDENTIAL TENANCIES ACT	COMMENT
	Home owners	Park renters	Renters	
Termination generally	<p>A long-stay agreement terminates if:</p> <ul style="list-style-type: none"> • either party gives a notice of termination and the tenant gives vacant possession; • the fixed term has ended and the tenant gives vacant possession; • the SAT terminates the agreement; • a person with superior title to that of the operator becomes entitled to possession of the premises; • a mortgagee of the premises takes possession; • the tenant abandons the premises; • the tenant delivers up vacant possession under a written agreement to end the long-stay agreement; or • the rights of the tenant or operator are ended by merger. 		<p>Despite any law to the contrary, a residential tenancy agreement terminates if:</p> <ul style="list-style-type: none"> • either party gives a notice of termination and the tenant gives vacant possession or the court terminates the agreement; • the fixed term has ended and either party has given notice and the tenant gives vacant possession or the court terminates the agreement; • the Court terminates the agreement; • a person with superior title to that of the lessor becomes entitled to possession of the premises; • a mortgagee of the premises takes possession; • the tenant abandons the premises; • the tenant delivers up vacant possession under a written agreement to end the residential tenancy agreement; • the rights of the tenant or operator are ended by merger; or • where every tenant dies. 	<p>Consideration to be given to how the RPLT Act should interact with other laws.</p> <p>Death of a tenant is dealt with separately – see part 12</p> <p>Part 10.4 – it is recommended that leases not automatically terminate upon mortgagee possession – the mortgagee would be required to take on obligations of park owner and comply with the RPLT Act in relation to termination of long-stay agreements.</p>
Termination for non-payment of rent	<p>Park operator may issue:</p> <ul style="list-style-type: none"> • default notice (14 days to remedy) followed by notice to vacate (7 days); or • termination notice - if rent not paid within 7 days can apply to SAT for termination order (must be at least 28 days from giving of notice to date of hearing) 		<p>Lessor may issue:</p> <ul style="list-style-type: none"> • default notice (14 days to remedy) followed by notice to vacate (7 days); or • termination notice – if rent not paid within 7 days can apply to court for termination order (must be at least 21 days from giving of notice to date of hearing) 	
Termination for breach of agreement	<p>Park operator may issue default notice giving at least 14 days to remedy breach. If breach not remedied, may give notice of termination (7 days to vacate).</p>		<p>Lessor may issue default notice giving at least 14 days to remedy breach. If breach not remedied, may give notice of termination (7 days to vacate).</p>	

	RPLT ACT		RESIDENTIAL TENANCIES ACT	COMMENT
	Home owners	Park renters	Renters	
The termination of a periodic tenancy 'without grounds' by a lessor/park operator.	Minimum of 180 days' notice to terminate a periodic tenancy 'without grounds.'	Minimum of 60 days' notice to terminate a periodic tenancy 'without grounds.'	Minimum of 60 days' notice to terminate a periodic tenancy 'without grounds.' Tenant may apply to the court for an additional 60 days' notice. The application must be made within 7 days of receiving the initial notice of termination.	See part 10.2 – it is recommended that without grounds termination no longer be permitted and that additional specific grounds of termination be included in the RPLT Act. It is proposed that the RPLT Act also be amended to include the ability for the tenant to apply for an extension of time.
The termination of a tenancy when a site is sold subject to vacant possession	Minimum of 180 days' notice to terminate a long-stay agreement. May terminate a fixed term agreement – compensation payable.	Minimum of 60 days' notice to terminate a long-stay agreement. May terminate a fixed term agreement – compensation payable.	Minimum of 30 days' notice to terminate a periodic agreement. Lessors cannot terminate a fixed term agreement during the currency of the fixed term.	See part 10.3 – it is recommended that the RPLT Act be amended to provide that fixed term agreements cannot be terminated in the sale of a park.
Mortgagee repossession	SAT must not make an order for possession of the premises in favour of a mortgagee unless satisfied that the tenant has had reasonable notice of the application.		Mortgagee must not take physical possession of the premises until notice has been served on the tenant. Notice must be for not less than 30 days. During the first 30 days, tenant not required to pay rent.	Part 10.4 – it is recommended that leases not automatically terminate upon mortgagee possession – the mortgagee would be required to take on obligations of park owner and comply with the RPLT Act in relation to termination of long-stay agreements.
Termination on grounds of undue hardship	SAT may make an order terminating a long-stay agreement on the ground of undue hardship to the operator. Compensation may be payable to a tenant under a fixed term lease.		The court may order the termination of a lease on the ground of undue hardship to either the lessor or the tenant. Compensation may be payable to the other party.	It is proposed that the RPLT Act be amended to also permit termination on the ground of hardship to a long-stay tenant.

	RPLT ACT		RESIDENTIAL TENANCIES ACT	COMMENT
	Home owners	Park renters	Renters	
Compensation	Payable to tenant on a fixed term lease if lease terminated on grounds of: <ul style="list-style-type: none"> • sale with vacant possession; • frustration; and • undue hardship (to operator). Payable to operator if the tenant abandons the premises or fails to comply with an order of the SAT to vacate the premises.		Payable to either party if lease terminated on grounds of undue hardship (to other party). Payable to lessor if the tenant abandons the premises or fails to comply with a court order to vacate the premises.	
On-site sale of tenant owned dwelling	RPLT Act contains provisions in relation to sale of homes.	Not applicable.	Not applicable.	
Death of a tenant	No provision.		Provides for termination of lease on the death of a tenant.	See part 12 for recommendations concerning death of a tenant. On death of a renter, the agreement is to terminate. On the death of a home-owner the agreement will terminate on the sale or removal of the home.
Recognition of person as tenant	No provision.		Provides a mechanism for a person who resides in the premises, but is not named on the lease, to apply to the court to be recognised as a tenant.	See part 10.5 – It is recommended that RPLT Act be amended for consistency with the Residential Tenancies Act.
Bonds	Bond must be deposited with Bond Administrator, ADI (bank) or real estate agent's trust account. Park operator must keep records of bonds received.		Bond must be deposited with Bond Administrator. Lessor must complete a bond lodgement form.	It is proposed that the RPLT Act also be amended for consistency with the Residential Tenancies Act.
Rent records	Park operator must keep a record of rent received for agreed premises.		Lessor must keep a record of rent received for the premises. Sets out the particulars to be included in the register.	It is proposed that the RPLT Act also be amended for consistency with the Residential Tenancies Act.

	RPLT ACT		RESIDENTIAL TENANCIES ACT	COMMENT
	Home owners	Park renters	Renters	
Responsibility for cleanliness and repairs	Park operator must provide and maintain premises in a reasonable state of cleanliness and repair.		Lessor must provide and maintain premises in a reasonable state of cleanliness and repair. Lessor must conduct repairs within a reasonable period after the need for repair arises.	It is proposed that the RPLT Act also be amended for consistency with the Residential Tenancies Act, by including a requirement that repairs be carried out within a reasonable period.
Compensation where tenant sees to repairs	Obligation imposed on operator to reimburse tenant for expense incurred in making urgent repairs.		Obligation imposed on lessor to reimburse tenant for expense incurred in making urgent repairs. Includes clear definitions and timeframes.	It is proposed that the RPLT Act also be amended for consistency with the Residential Tenancies Act.
Right of entry by park operator/lessor	Park operator permitted to enter the premises for the purpose of inspection not more frequently than once every 4 weeks.		Lessor may not inspect the premises more than 4 times in 12 months. Tenant is entitled to be on premises during an inspection. Lessor to compensate tenant for any loss incurred during an inspection.	It is proposed that the RPLT Act also be amended for consistency with the Residential Tenancies Act.
Right to make renovations or add fixtures	Agreement may prohibit addition of fixtures or the making of renovations by the tenant, or allow (but only with the operator's consent).		Agreement may prohibit addition of fixtures or the making of renovations by the tenant, or allow (but only with the lessor's consent). The lessor may affix any fixture or make any renovation, alteration or addition to the premises but only with the tenant's consent. The tenant's consent must not be unreasonably withheld.	It is proposed that the RPLT Act also be amended for consistency with the Residential Tenancies Act.
Offence provisions			Residential Tenancies Act has been amended to separate certain offences from the lease terms, for example, it is an offence to interfere with quiet enjoyment.	It is proposed that the RPLT Act also be amended for consistency with the Residential Tenancies Act.
Dispute resolution forum	State Administrative Tribunal.		Magistrates Court.	
Referral to Commissioner for investigation			If, while hearing proceedings under this Act, a court forms a suspicion that a person has committed an offence against this Act (other than an offence to which the proceedings relate), the court may refer the matter to the Commissioner for investigation.	It is proposed that the RPLT Act also be amended for consistency with the Residential Tenancies Act, but vest the power in the SAT.

	RPLT ACT		RESIDENTIAL TENANCIES ACT	COMMENT
	Home owners	Park renters	Renters	
Exemptions			<p>The Governor to make regulations to exempt or modify and part of the Act in relation to:</p> <ul style="list-style-type: none"> • a particular lease or class of leases; • particular premises or class of premises; or • any prescribed agency or person if they are acting on behalf of the Crown. 	<p>It is proposed that the RPLT Act also be amended for consistency with the Residential Tenancies Act.</p>

APPENDIX D

SUMMARY OF RECOMMENDATIONS

PART 6 - SCOPE OF TENANCIES COVERED BY THE RPLT ACT

6.1	<p>Renters of both site and dwelling (renters):</p> <p>It is recommended that long-stay agreements with renters continue to be regulated under the RPLT Act. Where appropriate, it is proposed to amend the RPLT Act to mirror recent amendments to the Residential Tenancies Act, so that tenants are treated equitably irrespective of the nature of the premises they lease.</p>
6.2	<p>Regulation of strata titled caravan parks:</p> <p>It is recommended that long-stay agreements in strata parks continue to be regulated under the RPLT Act. It is also proposed that the operation of the RPLT Act be modified in some parts to specifically accommodate strata parks.</p>

PART 7 - CONTRACTING OUT OF THE ACT

7.1	<p>Rolling short term contracts</p> <p>It is proposed that the RPLT Act be amended so that it applies to all tenancies entered into for non-holiday purposes, subject to some specified exceptions.</p>
7.2	<p>Contracting Out</p> <p>It is recommended that the RPLT Act be amended to prohibit any form of contracting out of the Act, including the standard terms of long-stay agreements set out in Schedule 1.</p>
7.3	<p>Contract provisions preventing the registration of a lease or a caveat</p> <p>It is recommended that no change be made to the RPLT Act regarding the registration of leases or caveats provided the recommendations relating to mortgagee possession (10.4) and termination of fixed-term tenancies on sale (10.3) are implemented. The implementation of these recommendations will mean the need to lodge a caveat would no longer be required.</p>
7.4	<p>Unilateral variation of a contract</p> <p>It is proposed that no change be made the unilateral variation prohibition; however the provisions of the RPLT Act will be reviewed in order to ensure that the prohibition is clear. Community education will also be undertaken, to ensure that people are aware that the prohibition exists.</p>

PART 8 - PARK RULES

8	<p>It is recommended that the RPLT Act and RPLT Regulations be amended to include specific provisions about the nature, enforcement and amendment of park rules.</p> <p>In setting prohibitions on certain types of rules, it is proposed that:</p> <ul style="list-style-type: none">• the focus of the rules should be confined to regulation of the interaction of residents in the common areas and how the use of their site impacts on other residents; and• the rules should not extend to key matters specific to the resident's tenancy, including rent, fees and charges, lease term and sale of home. These matters should be addressed in the long-stay agreement itself.
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PART 9 - DISCLOSURE

9.1	<p>What information should be provided to a tenant?</p> <p>It is recommended that the RPLT Act and RPLT Regulations be amended to strengthen and improve disclosure requirements subject to any requirements of privacy legislation. Disclosure documents will be revised, updated and consolidated where appropriate to ensure that the key elements of the long-stay agreement are brought to the attention of prospective long-stay tenants before they enter into a long-stay agreement. The onus will remain on the prospective tenant to satisfy themselves of the appropriateness of the park and the terms of the long-stay agreement.</p>
9.2	<p>When should disclosure be required?</p> <p>It is recommended that the RPLT Act be amended to set a minimum timeframe for disclosure documents and a copy of the agreement to be given to prospective tenants.</p> <p>The suggested timeframe is not less than five business days before an agreement is entered into. Waiver of the advanced disclosure period will be permitted in the case of tenants with their own registered vehicle, provided they are given the required disclosure documentation prior to their occupancy of the site and confirm in writing that they do not wish to take advantage of the five day advanced disclosure period.</p> <p>The timeframe for provision of disclosure documents would only apply to site only agreements. The advance disclosure requirement will not be applicable to renters, as this could impact on the ability of persons to obtain emergency accommodation.</p>
9.3	<p>Should ongoing disclosure be required?</p> <p>It is recommended that the RPLT Act be amended to include ongoing disclosure requirements during a tenancy for site-only agreements.</p> <p>A park operator will be required to disclose in writing to a home-owner any arrangements or restrictions, of which the park operator becomes aware, that will impact on the tenant's occupation of the park, subject to any requirements of privacy legislation. There will be no requirement for the park operator to provide any information surrounding their normal day-to-day business and financial negotiations/affairs, including with their bankers or other financiers.</p>
9.4	<p>Consequences of inadequate disclosure</p> <p>It is recommended that the RPLT Act be amended to strengthen the range of remedies available to address insufficient disclosure, by giving the SAT power to make an for order compensation for loss or damage arising out of inadequate disclosure or rescission of an agreement (if the tenant would not have entered into the agreement if full disclosure had been made). Penalties will apply for not completing and providing a disclosure statement to a prospective tenant.</p>

PART 10 – FACTORS AFFECTING SECURITY AND DURATION OF TENURE

10.1	<p>Mandating minimum lease periods</p> <p>It is recommended that no mandatory minimum fixed term lease period be imposed. However disclosure documents will be amended to clearly set out the risks for prospective tenants in entering into a periodic lease or a lease with a short fixed term.</p>
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10.2	<p>Termination of tenancy without grounds</p> <p>It is recommended that the RPLT Act be amended to remove without grounds termination for periodic tenancies and to expand the range of specific grounds for termination to include:</p> <ul style="list-style-type: none"> the park is to be closed or is to be used for a different purpose, this could include the situation where the operator's lease of the park has not been renewed or the annual licence under the CPCG Act has not been re-issued; the park requires repairs or upgrading in order to comply with statutory obligations; the park is to be appropriated or acquired by an authority by compulsory process; application by the operator for termination for serious misconduct by a home owner (on application to the SAT); "business" reasons that are sufficiently serious and significant so as to impact on the operation of the park; that the tenant has repeatedly interfered with the quiet enjoyment of the residential park by the park's residents (on application to the SAT); home owner's refusal to relocate – in cases of relocation at the operator's request (where the operator is to pay all reasonable costs to relocate to another reasonably comparable site or another community close-by which the operator runs) and a new agreement is to be entered into on same or substantially similar terms; or non-use of the site by the tenant for an extended period. <p>In order to reduce the regulatory burden on mixed-use parks with renters, it is proposed that this proposal would not extend to renters.</p> <p>It is also recommended that section 73 of the RPLT Act, which provides that a park operator may seek and order from the SAT terminating the long-stay agreement on the ground that the park operator would suffer undue hardship if required to terminate the agreement under any other provision of the Act, be retained and expanded so that the tenant may also make an application for termination on the grounds of hardship.</p>
10.3	<p>Termination of tenancy on the sale of the park – where vacant possession required</p> <p>It is recommended that the RPLT Act be amended to so that a park operator is no longer permitted to terminate a fixed term agreement on the sale of a park. RPLT Act will be amended to recognise that a tenant may still elect to receive compensation and vacate the park provided they are agreeable with the terms proposed by the park operator.</p> <p>Park operators would continue to have the right to terminate periodic tenancies on the grounds that a park is to be sold with vacant possession.</p>
10.4	<p>Impact of park owner insolvency – mortgagee possession</p> <p>It is recommended that the RPLT Act be amended so that long-stay agreements are not automatically terminated upon mortgagee possession.</p>
10.5	<p>Recognition of a tenant</p> <p>It is recommended that the RPLT Act be amended to provide for a person who has been residing in premises, but is not named as a tenant, such as a relative or de facto partner, to apply to the 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 if the operator has unreasonably refused to grant the occupant tenancy rights.</p>

PART 11 - COMPENSATION

11.1	<p>Determining compensation – fixed term tenancies</p> <p>It is recommended that the RPLT Act be amended to provide that the SAT has the power to take into account financial loss incurred as a result of the early termination of a long-stay agreement.</p>
11.2	<p>Compensation on termination of a periodic tenancy</p> <p>It is recommended that the right to compensation not be extended to apply to periodic agreements. Clear information about the unavailability of compensation for periodic tenancies should be included in disclosure information.</p>

11.3	<p>Compensation at the end of a fixed term tenancy</p> <p>It is recommended that the right to compensation not be extended to apply at the end of a fixed term agreement. Clear information as to a tenant's potential liability for relocation costs at the end of a fixed term should be included in disclosure information. A park operator would also be required to give a home owner adequate notice (for example, 180 days) that the tenancy is to end at the expiry of the fixed term.</p>
11.4	<p>Compensation on relocation within a park</p> <p>It is recommended that the RPLT Act be amended to include a specific provision in the RPLT Act to give tenants a right to seek compensation for costs of relocating within a park when required to do so by the park operator.</p>

PART 12 - DEATH OF A TENANT – LIABILITY OF TENANT'S ESTATE

12.1	<p>Renters</p> <p>It is recommended that the RPLT Act be amended to provide that where a sole renter dies, the long-stay agreement terminates upon their death. Any goods remaining in the park home upon the death of the tenant would be dealt with as abandoned goods. The current advertising requirements associated with abandoned goods will be reviewed.</p>
12.2	<p>Home owners</p> <p>It is recommended that the RPLT Act be amended to provide that on the death of a home owner the long-stay agreement continues until the home is sold or removed. The home-owner's estate would continue to be liable to pay rent. However, the park operator and the tenant's estate will be permitted to agree to a deferral of the payment of rent or enter into an arrangement for reduced rent (i.e. by relocating the home in the park).</p> <p>It is recommended that the RPLT Act also be amended to provide that the home owner's estate may apply to the SAT to terminate a long-stay agreement (therefore ending the estate's liability to pay rent), or to make such other order as appropriate, if the SAT is satisfied that the park operator is interfering with or obstructing the estate in its endeavours to sell the park home.</p>

PART 13 - TERMINATION OF TENANCY FOR DAMAGE TO PROPERTY AND VIOLENT BEHAVIOUR

13	<p>It is recommended that no change be made to the current provisions of the RPLT Act in relation to termination of tenancy for damage to property and violent behaviour.</p>
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PART 14 - RENT VARIATION

14.1	<p>Frequency of rent increases</p> <p>It is recommended that no change be made to the current provisions of the RPLT Act in relation to the frequency of rent reviews.</p>
14.2	<p>Method of varying rent</p> <p>It is recommended that the RPLT Act be amended to require that the method of rent review be clearly specified in all long-stay agreements; market reviews of rental will not be permitted.</p>
14.3	<p>Unforeseen costs</p> <p>It is recommended that the RPLT Act be amended to permit park operators to increase rent for specified purposes, such as a significant increase in the operational costs in relation to the park (including significant increases in taxes, rates or utilities costs) or unforeseen significant repair costs in relation to the park.</p> <p>Sufficient notice (for example, 60 days) would be required to be given to tenants, including details of the increase and adequately outlining the justification for the increase.</p> <p>If the tenants do not agree to the proposed increase, the park operator would be able to apply to the SAT for an order for the increase to apply.</p>

PART 15 - FEES AND CHARGES

15.1	<p>Cost recovery in relation to fees</p> <p>It is recommended that the RPLT Act be amended to specifically provide that fees for items other than rent should be charged on a cost recovery basis only and to give the SAT the jurisdiction to determine disputes in relation to such matters. The RPLT Act Regulations will be amended to remove the \$200 cap on screening fees and instead impose a 'reasonable' amount requirement.</p>
15.2	<p>Costs of preparing a long-stay tenancy agreement</p> <p>It is recommended that the RPLT Act be amended to provide that the park operator must bear the costs of preparing a long-stay agreement and that this requirement cannot be varied by the long-stay agreement.</p>
15.3	<p>Visitors' fees</p> <p>It is recommended that no amendment be made to the RPLT Act in relation to the charging of visitors' fees. Visitors' fees must be clearly set out in the long-stay agreement and disclosure material. It is recommended that a requirement be introduced that the amount of the visitors' fee must be reasonable and be consistent with the principle of cost recovery.</p> <p>It is recommended that the RPLT Act be amended to provide that a carer's visit will be exempt from the payment of visitors' fees.</p>
15.4	<p>Entry fees</p> <p>It is recommended that the current prohibition on the charging of entry fees continue.</p>
15.5	<p>Exit fees</p> <p>It is recommended that the RPLT Act be amended to provide that:</p> <ul style="list-style-type: none">• a park operator would be permitted to offer sharing agreements and charge exit fees, however there must be full transparency in relation to the terms of those arrangements which must be fully disclosed to the prospective tenant prior to their occupation;• the disclosure statement must include the basis upon which the sharing agreement and/or exit fee has been calculated. The park operator will also be required to provide worked examples that provide the costs involved in realistic scenarios so that the tenant is able to understand how the sharing agreement and/or exit fee would operate in practice;• a cooling-off period will apply to allow a prospective tenant time to consider the sharing agreement and/or exit fee material further before they commence living in the park;• an exit fee will be the only fee recoverable from an outgoing tenant. No other fee, charge or premium will be recoverable, other than the recovery of costs incurred in providing services such as selling agent or those which directly relate to obligations under the long-stay agreement. An operator will not be prevented from charging for their expenses relating to the marketing and sales service a park operator provides if appointed the selling agent for the home, even where a sharing arrangement/exit fee is in place. However, an operator will not be able to charge a set fee or percentage of the sale price, which does not reflect work done in the sale of the home, in addition to an exit fee;• in instances where a long-stay agreement is to be entered into with an existing home owner, or where the seller is not the operator of the residential park in which the park home is located, a park operator will be prohibited from only offering a sharing arrangement. In these circumstances, the park operator will be required to also offer a rent only long-stay agreement that does not include a sharing arrangement;• no standard form or clauses will be introduced in relation to exit fees/sharing arrangements. However, the parties will be prohibited from excluding the provisions of the RPLT Act or agreeing to terms inconsistent with the RPLT Act in any agreement that provides for sharing or exit fees; and• where it can be shown that prior disclosure did not occur, or where the park operator attempts to charge an outgoing long-stay tenant other charges, fees or premiums in addition to the exit fee that do not directly relate to an obligation under the long-stay agreement, any such terms or amounts will be invalid.

15.6	<p>Paying for electricity</p> <p>It is recommended that no amendments be made to the RPLT Act, however education material (fact sheets) for park operators and tenants would be produced about the rules regarding the on-selling of electricity by park operators, including requirements to provide information about the charges and a list of relevant agencies that could assist in disputes regarding these matters. In addition, the proposed new disclosure statement would also highlight the fact that charges for electricity consumed by the tenant (if the tenant has a separate electricity meter) must be in accordance with the relevant electricity by-laws as exist from time to time.</p>
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PART 16 - MAINTENANCE AND SHARED FACILITIES OR PREMISES

16.1	<p>Services and facilities promised by the park operator</p> <p>It is recommended that the RPLT Act be amended to give the SAT the power to make the following orders where a park operator has not provided services or facilities promised as part of pre-contractual negotiations:</p> <ul style="list-style-type: none"> • an order requiring the park operator to provide the facility or service (specific performance); • an order that the park operator pay the tenant compensation; • an order for a reduction in the rent payable; or • in circumstances where the tenant would not have entered into the contract had the tenant known that the facility or service would not be provided, an order rescinding (cancelling) the contract.
16.2	<p>Ongoing maintenance and repair</p> <p>It is recommended that the RPLT Act be amended to impose an obligation on the park operator in relation to maintenance and repair and to give the SAT the specific power to make an order requiring that work be carried out as soon as is reasonably practicable and to a standard that is reasonable in the circumstances. The SAT would be required to take into account the age, character and prospective life of the facilities. It may also be appropriate for the SAT to take into account the level of rent paid by tenants.</p>
16.3	<p>Transparency in relation to maintenance costs</p> <p>It is recommended that no annual reporting requirements be introduced in relation to expenditure on maintenance and capital.</p>
16.4	<p>Funding of capital improvements</p> <p>It is recommended that no mechanisms be included in the RPLT Act for the funding of capital improvements.</p>

PART 17 - SALE OF HOMES

17.1	<p>The right to sell a home while it is situated on the park</p> <p>It is recommended that the RPLT Act be amended to provide home-owners with a right to sell a home on-site. This right would not be able to be excluded or limited in the long-stay agreement. Tenants would be required to notify the park operator before offering the home for sale and would be required to comply with reasonable restrictions regarding display of 'for sale' signs (for example, size and location).</p>
17.2	<p>Interference in sale by park operator</p> <p>It is recommended that the RPLT Act be amended to prohibit a park operator from interfering with or hindering the sale of a park home by a home owner.</p>
17.3	<p>Useful life of a park home</p> <p>It is recommended that the RPLT Act be amended to impose an obligation on the seller of the home to advise of the date of manufacture. It is proposed that a standard information sheet be developed for use on the sale of a home. This document would include key information about the home (including the date of manufacture) and would be provided by the seller or their agent to the purchaser.</p>
17.4	<p>Extent of park operator involvement in the sale process</p> <p>It is recommended that it is a condition of a sale between a home-owner and a purchaser that the park operator consents to a lease agreement with the purchaser. The condition would not apply in those instances</p>

	where a home is to be removed from the site following sale. If the park operator does not agree to enter into a tenancy agreement on reasonable terms, the purchaser would have the option of cancelling the contract. The park operator would be required to provide a copy of the proposed long-stay agreement and disclosure material to the purchaser prior to entry into the tenancy agreement.
17.5	<p>Creation of tenancy rights for the purchaser</p> <p>It is recommended that the RPLT Act be amended to require a park operator to enter into a new site agreement with a purchaser. However, the park operator would not be required to enter into an agreement if the operator has reasonable grounds for declining or if the operator cannot reasonably reach agreement with the purchaser as to the terms of the site agreement.</p>
17.6	<p>Appointment of park operator as the selling agent</p> <p>It is recommended that the RPLT Act be amended to provide that the park operator is prevented from requiring a home owner to appoint the operator or a person nominated by the operator as selling agent. As noted in 15.1 above, the RPLT Act Regulations will be amended to remove the \$200 cap on screening fees and instead impose a 'reasonable' amount requirement.</p>
17.7	<p>Commission for park operator acting as selling agent</p> <p>No legislative change is recommended in relation to selling agency fees. The fees payable on the sale of a home are to be specified in the selling agency agreement.</p>
17.8	<p>Fees payable to a park operator who is not the selling agent</p> <p>It is recommended that the RPLT Act and RPLT Regulations be amended to permit a park operator (who is not the selling agent) to recover reasonable costs incurred in relation to the sale of a home, including administration costs and out of pocket expenses.</p>

PART 18 - PARK OPERATOR CONDUCT PROVISIONS

18	<p>It is recommended that the RPLT Act be amended to provide that when determining a dispute under the RPLT Act, the SAT would be given the jurisdiction to consider the conduct of park operators and whether breaches of the standards set by the ACL have occurred.</p> <p>The SAT would be able to consider whether a park operator has:</p> <ul style="list-style-type: none"> • made false or misleading representations; • engaged in misleading or deceptive conduct; • acted unconscionably; or • engaged in harassment or coercion. <p>The power to consider these factors could be included by reference to the relevant provision of the ACL or by specific reference in the RPLT Act.</p> <p>The remedies available to the SAT would also be broadened to ensure that the SAT has the power to make all necessary orders in order to deal with issues of this nature. The RPLT Act will be amended to specifically provide that, in making any order for costs, the SAT may consider whether a party has acted frivolously or vexatiously in bringing or conducting proceedings.</p>
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PART 19 – PARK LIAISON COMMITTEES

19	<p>It is recommended that the RPLT Act and RPLT Regulations be amended to require a park operator to establish a PLC in a park with 20 or more long-stay sites, but subject to the majority of tenants in the park supporting a PLC.</p> <p>The following additional requirements will also be included:</p> <ul style="list-style-type: none"> • that park operators and managers not unduly interfere in the PLC election process; and • nothing in the RPLT Act is to be taken to prohibit tenants from forming any social or other committee; however these committees cannot usurp the role of the PLC.
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PART 20 – DISPUTE RESOLUTION

20

It is recommended that the RPLT Act be amended to specifically include the power for the SAT to make an order declaring a provision in a long-stay agreement void if it is satisfied the term is harsh or unconscionable.

PART 21 – SEPARATE REGULATION OF LIFESTYLE VILLAGES

21

It is recommended that the RPLT Act not include provisions that only apply to lifestyle villages and park home parks.

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