

### PHOA NEEDS YOUR SUPPORT – RESPONSE TO STATUTORY REVIEW REPORT (SRR)

This is the last chance to have our say in the Review of the Residential Parks (Long-stay Tenants) Act (RPLT), about proposed changes to be put to State Parliament. It represents the finale of four years of patience, angst, and activity for PHOA as a major stakeholder in the Review process. A PHOA sub-committee has produced a response to the SRR from which the Summary below has been taken to acquaint you with the PHOA reaction to SRR proposals. The five points we have persistently advocated for improvement (Lease agreements, Eviction Without Grounds, the basis of rent increases, broadening of compensation, fees and payments, fixed term renewable leases and the freedom to sell one's own house have all been considered in the SRR for legislative changes to be made.)

Your support of the PHOA response is **VITAL** to prove it is representative of our membership. The Department of Commerce (Consumer Protection) asks that feedback from members includes not only positive support, but alternatives as well. They 'want to see a broad spectrum of responses from those living in Residential Parks' (RPs).

**DEADLINE FOR FEEDBACK: MIDNIGHT ,SUNDAY 10<sup>th</sup> APRIL 2016**

**Contact us by any of these:** Email: [phoawa@gmail.com](mailto:phoawa@gmail.com)

Post: PO Box 1648, WANGARA DC, 6947 or

Phone: 9453 3338 Mobile 0418 734 814 (after 6.00 pm)

**NEXT NEWSLETTER:** Has been deferred until late May to allow for approval on 18 May of new household rates recommended by Executive Committee.

**ELECTRONIC NEWSLETTERS ANYONE?** *With postal costs going through the roof, we invite those with email access to get 'with it' and agree to receive newsletters by email. As well as helping PHOA, think of the paperwork and trees you'll save!*

**PHOA Executive Committee.** from 19 March: B Wolff (President), J Engwirda (Vice President), R Hopps (Treasurer), J Ransom (Membership Officer), N Bond (Secretary).

#### MAY GENERAL & SPECIAL MEETING

**10 a.m. Wednesday 18<sup>th</sup> May 2016**

**At SERPENTINE GOLF CLUB**

**1412 Karnup Road, Serpentine**

**MEMBERS ARE URGED TO ATTEND**

**NON MEMBERS WELCOME**

**Small plates of finger food would be appreciated.**

### THE STATUTORY REVIEW REPORT (SRR)

The Minister for Commerce, Hon Michael Mischin, in a foreword to the SRR, describes its purpose as: *"Identifying provisions of the RPLT Act that are not working and need changing"*. He states the report is the result of an extensive stakeholder consultation process, discussing findings of the Statutory Review and providing recommendations for the consideration of Government.

The Minister acknowledges that legislative changes will affect park operators, park tenants and all levels of government. He has issued the SRR for *"Stakeholders to consider the proposed recommendations and comment before the Government makes a final decision."* The Minister *"encourages long-stay tenants and park operators to take the time to read the report and provide feedback on the proposed recommendations."*

Not covered in our Summary are the following from the SRR : *1 Purpose and Structure of this Report; 2 Background; 3 The Residential Parks Sector in WA; 4 Objectives of the Act; 5 Legislative Framework* .

PHOA has responded to sections 6 to 21, including sub-sections, but we have not included our observations and specific examples here. Our summary indicates where the SRR-preferred proposal (*marked \**) is supported and alternative PHOA recommendations if not.

PHOA response to the 245 page SRR is shorter, but too long to send to members, hence we offer the following Summary. If you would like further information on any specific aspects of the legislation please don't hesitate to contact us.

## SUMMARY 29.3.2016 OF PHOA RESPONSE TO STATUTORY REVIEW REPORT

### **6 SCOPE OF TENANCIES COVERED**

**6.1 PHOA supports Option A\***, that **Renters** should remain under the RPLT Act. Some members support Option B believing that being under the Residential Tenancies Act offers more protection. PHOA supports further legislation to ensure park home renters *can* expect the same standards of cleanliness and maintenance that they would in a suburban rental.

**6.2 PHOA agrees** that long-stay agreements in **Strata Titled Parks** should remain under RPLT regulation.

### **7 CONTRACTING OUT OF THE ACT**

**7.1 PHOA supports Option B:** PHOA advocates the elimination of **Rolling Short Term Leases** and for the RPLT Act to apply to **all** tenancies entered into for non-holiday purposes, subject to the 8 proposed exceptions listed in the SRR.

**7.2 PHOA supports option B\*:** that park operators cannot **Contract in or out of the Act**.

**7.3 PHOA supports Option B\*:** that Leases cannot prevent a tenant from **Registering a Lease or Caveat**.

**7.4 PHOA agrees\*** that the current prohibition on **Unilateral Variations of a Contract** should continue for all parties.

### **8 PARK RULES**

**8 PHOA supports Option B\*** to include in **Park Rules** specific provisions about their nature, consistent enforcement, amendment and correct use by Operators. We reject the need for a minimum number of tenants to request changes.

### **9. DISCLOSURE REQUIREMENTS**

**9.1 PHOA supports Option B\*** that the Act be strengthened to improve/update **Disclosure documents**. They must be financially transparent, advise of Ageing-in-Place limitations and any other limitations already placed on Park land use.

**9.2 PHOA Supports Option B\*:** a **Minimum Time Frame** in which disclosure documents and long stay agreements must be given to prospective tenants (not less than 10 business days before signing) and enforceable consequences for non-disclosure.

**9.3. PHOA supports Option B\*:** **Ongoing Disclosure:** tenants must be told within two months of an operator's decision on any matter relevant to the future use of the site, with enforceable consequences for non-disclosure.

**9.4 PHOA supports Option B\*:** That the **Consequences of Non-Disclosure** by operators and enforceable penalties should be enshrined in the Act.

### **10 SECURITY AND DURATION OF TENURE**

**10.1 PHOA opposes Options A or B** re **Mandating Minimum Lease Periods**. Existing park home owner occupiers will still be disadvantaged if security of tenure is not provided and compensation not applicable. We prefer open-ended leases providing for compensation because fixed-term lease protection ends the day the lease expires.

**10.2 PHOA supports Option C:** Legislation must prevent park operators using **Termination of Lease Without Grounds** capriciously or arbitrarily. Compensation must be paid to a park home owner occupier who has to leave. The RPLT Act must protect home owners under Australian Consumer Law if park operators wish to change the land use of the park.

**10.3 PHOA opposes Options A or B** because neither ensure that park home owner occupiers, on the **Sale of the Park**, are entitled to compensation beyond the last day of a fixed lease.

**10.4 PHOA supports Option B\*** (that Leases are not automatically terminated on **Mortgagee repossession**) with **these reservations:** Park Operators must clarify who owns all structures on the site, and the mortgagee must understand that they have no claim to structures on the leased site.

**10.5 PHOA opposes Options A or B** on the **Death of a Tenant** as both complicate the probate issue. An incumbent resident who satisfies age and other criteria for acceptance should be recognized as such and allowed to sublet the property as the tenant of the deceased's estate until probate is finalised.

## 11 COMPENSATION

11.1 PHOA supports Option C\* on Determining Compensation for fixed term tenancies BUT advocate that this option must be available to *all park home owner occupiers*.

11.2. PHOA opposes Option A and B re Compensation on ending of a periodic tenancy. PHOA supports Option C which would provide those on periodic leases with the right to compensation. **We do not support** a qualifying minimum occupation period.

11.3 PHOA opposes A, B and C re Compensation at the end of a fixed term tenancy. Park home owner occupiers must be entitled to reside where their home is sited for the viable life of the structure.

11.4 PHOA opposes Option A and B re Compensation on relocation within a park. The tenant is apparently expected to organise the move with not more than a promise of compensation.

## 12. DEATH OF A TENANT

12.1 PHOA supports Option B re Liability of Estate on death of a rental tenant: that the RPLT Act be amended so that rental agreements terminate upon the death of a tenant.

12.2 PHOA opposes Options A and B re Liability of Estate on death of a home owner. Relatives of the deceased should be able to sublet until a sale can be effected. If management unreasonably refuses this, applicants should be able to apply to the SAT. Otherwise, by agreement, accumulated rent could be paid on sale of the home.

## 13 TERMINATION

PHOA supports Option A\*: The operator could seek a SAT Order for Termination for Damage and Violence BUT we believe operators should be required to first give Default Notices unless damage or danger is extreme.

## 14 RENT

14.1 PHOA supports the proposal\* that no change be made to regulations re Frequency of Rent Increases.

14.2 PHOA supports Option C\*. Calculations used to Vary Rent should be transparent and the market review method of calculation prohibited.

14.3 PHOA opposes proposals that operators can demand contributions for Unforeseen Costs or Capital Expenditure especially from periodic tenants.

## 15. FEES AND CHARGES

15.1 PHOA supports Option B\*: Fees and charges other than rent can be collected on a cost recovery basis only.

15.2 PHOA supports Option B\*: The park operator should bear Costs of Preparing a long-stay agreement.

15.3 PHOA supports Option B: A Visitor Fee may be payable *only* where shared facilities are used by visitors.

15.4 and 15.5 PHOA supports\* prohibition of Entry Fees and Exit Fees.

15.6 PHOA supports Option B with the PROVISIO that 15.1 disallows electricity supply and consumption charges being greater than those prescribed by Parliament.

## 16. MAINTENANCE AND SHARED FACILITIES

16.1 PHOA supports Option B\* re Services/facilities promised by Park Operator with the PROVISIO that it applies to *all* park home owner occupiers.

16.2 PHOA supports Option B\* re Ongoing Maintenance and Repair with the PROVISIO that the RPLT Act be amended to remove the provision for park operators to contract out of, or vary this obligation.

16.3 PHOA supports Option A re Transparency of Maintenance Costs with the PROVISIO that the details must be able to be produced on request by the tenant or by request from the SAT.

16.4 PHOA supports Option A that operators cannot increase rent to fund Capital Improvements.

## 17. SALE OF HOMES

**17.1 PHOA supports Option B\*** The Act must provide a home owner with the right to sell a home on-site, with the PROVISIO that the owner's right to sell on site cannot be excluded by lease agreements.

**17.2 PHOA supports Option B\*:** To prohibit an Operator interfering with or hindering the sale of a park home by a home owner. It provides greater protection for tenants and is consistent with the other jurisdictions.

**17.3 PHOA supports the proposal\*** to create a standard Contract for sale of a park home for its useful life either prescribed by regulation or approved by the Commissioner.

**17.4 PHOA supports a combination of Options B & C**, to clarify the Extent of Operator involvement in the sale and enable all parties to the sale to be provided with timely information and full disclosure documents.

**17.5 PHOA supports Option D (combining Options B and C)**, the Creation of Tenancy Rights for a Purchaser with a PROVISIO that there must be stated grounds on which an operator can refuse assignment of a lease agreement.

**17.6 PHOA supports Option B\*** that the Appointment of Park Operator as Selling Agent cannot be compulsory when a tenant sells.

**17.7 PHOA supports Option B\*:** If there is a Commission for an Operator acting as Selling Agent, selling agency fees *must* be specified and disclosed to the home owner before they commence their tenancy.

**17.8 PHOA supports Option B\*:** Administrative Fees, where a Park Operator is not the selling agent, may be permitted but are limited to recovery of reasonable costs by the park operator.

## **18 PARK OPERATOR CONDUCT PROVISIONS**

**18. PHOA supports Option B**, as it includes Australian Consumer Law (ACL) provisions in the RPLT Act to enable SAT to consider Park Operator Conduct in any dispute and provides SAT with the powers to make all necessary orders. PHOA recommends that appropriate training should be made available to all park operators.

## **19 PARK LIAISON COMMITTEES**

**19.1 PHOA supports Option B\*** which retains current core PLC aspects, regulates a process for PLC establishment and selection of tenant representatives, and operators can demonstrate attempted compliance with the provisions of the RPLT Act. . **PHOA recommends** that Section 60 of the RPLT Act be included in the Regulations for implementation of the Act. **PHOA recommends** that there should be a percentage of interested tenants for a PLC to function on a regular basis.

## **20. DISPUTE RESOLUTION**

**PHOA supports Option B\***, that the SAT be given specific powers to make an order varying a long-stay agreement or declare a provision in a long-stay agreement invalid.

## **21. SEPARATE REGULATION OF LIFESTYLE VILLAGES**

**PHOA supports Option A\*** - Status Quo, because all park operators and Long stay tenants are treated the same under the RPLT Act and it recognises that home owners are divided relatively evenly between mixed-use parks and lifestyle villages.

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*NOT ONLINE? Have something to say? Please make brief notes on spaces in this summary or below, and mail it A.S.A.P. to PHOA, PO Box 1648, Wangara DC, WA 6947. We hope you do!*

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