PARK HOME OWNERS ASSOCIATION WA INC.

REPLY TO

DEPARTMENT OF COMMERCE CONSUMER PROTECTION

CONSULTATION REGULATORY IMPACT STATEMENT

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

JUNE 2014

Park Home Owners
Association of WA Inc.

PROGRESS THROUGH DIALOGUE

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PREAMBLE

The Park Home Owners Association (PHOA) in Western Australia was formed in 1998 by a group of Park residents south of Perth. This group saw the need for a coordinated approach to lobbying the State Government for Legislative protection that would include improved security of tenure, compensation and personal protection from unconscionable behaviour for Park tenants. Legislation was introduced in 2006. However, the Act did little to focus on' the greater security of tenure' which was the aim of the (RPLS) Act. 2006. The (EISC) 2009 stated the Act had 'simply crystallised what, in fact were already quite tenuous tenancy arrangements'. The situation for Park tenants, to date, has not improved with over 10 parks closing down resulting in hundreds of disenfranchised Park tenants. The "value" of Parks is diminishing; our community is losing a wonderful family asset and a form of affordable housing is threatened.

INTRODUCTION:

What needs addressing in the RPLS Act is the administration of the Act, the integrity of the park operators, the level of understanding of the tenants and the safety and security of the tenants. It is a fallacy that what government, private and listed organisations promote in the market place actually occurs in reality.

The Consultation Regulatory Impact Statement mentions the expanding of SAT's powers to adjudicate when dealing with disputes between Park operators and tenants. This statement overlooks the imbalance in not only the landlord/tenant relationship, but the imbalance in finances and abilities of the two parties. A standardised dispute resolution process is required to facilitate a resolution to issues before they reach the SAT stage.

In NSW and Victoria paid workers are employed to support Park tenants only. This lack of support for a vulnerable group needs addressing in WA.

Several points in the CRIS document propose changes to the Act with a view to narrowing the gap between Park tenant and operator. The increase in older West Australians choosing Park living for their retirement; and the imbalance in the Park operator/tenant relationship is highlighted.

Operators' predictions that increased benefits for tenants could lead to a rise in rents or Parks closing down is a common statement made throughout the report. There is often collateral damage when change occurs as people fail to adjust and adapt to the changing environment. Business is no exception. For an even relationship to develop in Parks greater understanding from both sides is required for a balanced outcome

It can be forgotten, when industry needs predominate, that tenants have similar needs; such as predictability and respect. When business stresses 'flexibility' and 'rights' which, when granted unfairly, impact on tenants' security and tenure then,

some compromise is necessary for each to move forward in a fair and just manner. Business models need to keep pace with society's expectations.

4.1 Rational for government intervention in the residential parks sector

'Housing is a basic need. The demand for affordable accommodation exceeds supply, which potentially enables providers of accommodation, including Park operators, to exert a degree of control in this market. Without balanced regulation protecting Park tenants operators could exert their market power through actions such as immediate evictions, and arbitrary rent increases.' (RPLS Act review CRIS statement P 13)

The above statement describes clearly the need for legislation that addresses the imbalance in the power ratio between park operator and tenant. Decreasing the gap to the point where both parties can feel safe and secure in their Park could be a win, win for both sides

8.1 Contracting out of the Act

Proposed change – PHOA agrees with the Department's position 'to prohibit any form of contracting out of the Act, including the requirement that park operators bear the costs of preparing the long-stay agreement.'

Issue 8.1 (d)

The imbalance of power between the park operator and the tenant requires that the Act be adhered to. Some Park tenants find it difficult to understand leases and subsequently the consequences of opting out of clauses contained in the lease. There is a need to protect this group of tenants by ensuring safety measures contained in the Act remain and cannot be altered or left out.

- **Contracting in** also needs justifying as extra fees, not mentioned in the Act, could be introduced into the lease.

- The tenant requires a cooling off period 14 days minimum to obtain an independent assessment of the lease.

Park operators can seek to receive payment from new tenants using a variety of administrative clichés. Responsibility on the part of the Park operator together with strict compliance checks by the Department of Commerce is crucial if the Act is to offer protection for the tenant. Any ambiguity or provision for the Park operator to negotiate in matters of finance, content of the lease or any other issue that affects the quality of life for a tenant should be protected by law.

- PHOA believes a **no contracting out of the Act** clause would offer greater protection to the tenant especially to people who experience difficulty in reading complex documents and for CALD tenants.

8.2 Contract provisions preventing the registration of a lease or a caveat

PHOA agrees to the **possible change** as outlined p 33.

Placing a caveat on a lease 8.2 (d) can offer a degree of security for a tenant. 'Subject to claim caveat', is all that is necessary to protect their leasehold interest.

This action allows for the tenant to be informed about the Park being placed on the market for sale and other important matter affecting their tenure or lifestyle. Such a caveat should not impose a financial cost on the park operator. A disclosure of intent would be required to meet the caveat requirements. There is no financial cost to this requirement. **On-going disclosure 9.3** indicates that tenants would be informed of the park operator's intent to sell. Therefore, the caveat would not create further imposition on the park operator than is currently required.

8.3 Unilateral variation of a contract

- **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.**

Currently tenants can be unaware that changes have been made to their contract or the park rules until they either query a fee, or sell their home, for example. Varying an agreement is not so much the issue, it is the secretive way it can be carried out by park operators. Contracts signed by tenant and Park operator are legal documents and should not be altered unless both parties 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.

8.4 Rolling short-term contracts

The Proposed change to Rolling short-term contracts is supported, with the follow amendments.

- Rolling short-term contracts will not apply to park homes or converted caravans. Also
- Where the tenant has been in residence for more than six months and/or where the tenant states they wish to remain for the foreseeable future. There should be no continuation of the Rolling short-term contract.
- **8.4 (d)** Short-term trial periods could be for three months providing there is no inducement to purchase a property in order to secure the lease during the short-term trial.

9.0 Disclosure

Failure by the park operator to disclose a pertinent fact that, if known, may have resulted in the resident not purchasing in the Park, should attract a significant fine. It is too easy to say 'I was not aware of that particular fact at the time of signing you up'. It is important that Park operators know what may impact on the continuity of their Park and other factors relevant to tenants. **All should be disclosed**

9.1 What information should be provided to a tenant?

The proposed change on Page 40 is supported.

Additional matters as listed on P 41 are supported.

Extra additional matters to be included in a disclosure document:

- Periodic leases to clearly state evictions can occur with 180 days' notice.

- Any litigation currently against the park operator for any purpose
- What Act (RPLS) relates to park living
- Access to SAT or other Dispute resolution process if issues arise.
- List organisations e.g. COTA, DOCs PHOA who the prospective tenants may contact for advice.

Substantial fine to be imposed for non-disclosure of significant information.

9.2 When should disclosure documentation be provided?

The content of disclosure statements may have a great impact on a person's decision to buy into a Park.

- All documentation should be provided to the prospective tenant **14 days,** prior to the signing of any lease, moving into any structure in the Park or the exchange of any monies; all of which should be prohibited during the cooling off period.

PHOA is aware that, in the country in particular, leases and other documentation may not be provided to the new tenant until moving into the home, if at all. When this occurs monies have changed hands and the previous tenant has moved away. A cooling off period is rarely given. Recouping monies if a tenant changes their mind could be impossible unless the park operator is the seller. Incorporating cooling off periods into the time given for reviewing documentation is imperative if a tenant's decision to purchase is made after receiving full informion and without time or operator pressure. For persons exhibiting a lack of understanding of the documentation the Park operator needs to provide guidance to the buyer to seek appropriate assistance.

- To accommodate this safety clause a minimum of 14 days cooling off should apply.

Failure to provide all legally required documents and providing the legislated cooling off period should negate any lease signed by the tenant. The tenant should be compensated for all expenses encountered in purchasing the property if, they wish, to cancel the agreement.

9.3 Should ongoing disclosure be required?

Option B is supported with the following additions:

- The park being placed for sale
- The removal of a facility
- Movement of homes/caravan within the park and for what reason
- Change of use of any part of the park affecting permanent tenants
- Staff movements

Ongoing disclosure could assist in building a sense of confidence in the management of the Park for the tenant and improve the level of respect. Ongoing disclosure reduces the likelihood of conjecture and gossip; thus creating a less stressful living environment.

Option B would place very little additional administration time on the park operator. It would require the typing of one document photocopied for the required number of tenants.

9.4 Consequences of inadequate disclosure

Proposed changes as outlined on Page 46 are supported.

The amendments would provide greater security for tenants and/or options for redress in the event inadequate disclosure. PHOA believes a substantial fine should be imposed on Park operators who fail to fully disclose information relating directly to a residents decision to purchase. The current fine of $5,000 is totally inadequate, it does not reflect the serious impact that failure to disclose can have on a tenant.

10 Factors affecting security of tenure

Security of tenure is and will remain a major concern for Park tenants while the legislation does not include compensation for residents facing eviction and 'eviction without grounds' remains in the Act. Regardless of fixed or periodic leases tenants require a minimum safety net when Parks close or their purpose changes. Clear unambiguous legislation that regulates for a safe predictable future for Park tenants is required; taking into account the status of many tenants who can be in receipt of finite incomes. The lack of alternative sites for Park tenants, loss of community, friends and a finite income all act to affect security of tenure.

10.1 Mandating minimum lease periods

PHOA disagrees most strongly with the Department's and Park operators stance on the limitations being put forward on offering long leases to residents due to a 12-month Local Council licence. As stated in the Caravan Parks and Camping Grounds Act review, it is proposed to extend caravan park licences to five years. On consulting local councils involved with licencing caravan parks it was clear that a 12 month licence does not prohibit Park operators from providing long-term leases. As with driver licences, abide by the rules and the licence remain in force. Several caravan parks do offer long leases; Koombana Bunbury 20 years, Binningup Caravan Park 30 years.

PHOA's view is:

- **Compensation for long-term residents evicted from parks is mandatory.** Security of tenure will improve if compensation is payable to all tenants who resided in a park for five (5) years, minimum, regardless of the type of lease in force. The change needs to be applicable to all Park residents both current and new. The level of compensation to be either negotiated between the parties or adjudicated by SAT.
- Option B – Operators have the choice to offer short-term leases if they are unhappy with paying compensation. Park operators prepared to offer long-term site agreements, and pay compensation on eviction, would be free to do so.

  Legislate to provide park operators with the choice to:
  1) run a short-term park with no compensation for the tenant
  2) run long-term site park with compensation for tenants when evicted
  Such a law would enable both parties to achieve their aims.

10.2 Termination of tenancy 'without grounds'

PHOA supports a combination of both points B & C.

The second dot point under 'C' could result in a tenant being evicted for relatively minor repairs or maintenance and, within a short term, the site let once again. Most repairs and maintenance around a house or caravan can be carried out while the building is in situ. An alternative to this arrangement would be to move the home to an alternative site at the park operator's expense. The reality is once a Park Home is on site it would be a rare occurrence that would require it to be moved.

Dot point 6 in 'C' leaves the option open for Park operators to evict a tenant due to 'non-use' but within a short time let the site to another party. **This point is too easily abused.**

Option C offers no reference to an adjudicating body to ensure the reason for eviction complies with the Act. Failure to add a safety net leaves tenants in the same position they currently are, open to abuse and unfair eviction; addressing the issue of acting 'capriciously or arbitrarily' is also diminished.

Parts of Option B & C supported

- Remove 'without ground' from all tenancy types
- Increase **tenant's time** for notice 'without grounds' supported (state time required in the lease, suggest 4 weeks)
- Park is to be closed. (refer to Compensation Part 11)
- Park requires repairs or up-grading, (matter the decision of a Local or State body, proof from the Park operator required) (refer to Part 11)
- The Park to be appropriated (proof of such an action to be provided by either the Park operator or appropriating authority)
- The eviction of a tenant for serious misconduct, via SAT order
- Relocation to another site at the Park operator's expense supported. Tenant to have the right to appeal in the event the proposed new site is inappropriate due to position or condition.

Following additions to be included:

- Park operator is responsible to park tenants for showing 'reason' for eviction
- Should documented proof of 'reason' not be forthcoming SAT to be an option
- **Dot point 4 under Option 'C' is fully supported**.

10.3 Termination of tenancy on the sale of the Park (where vacant possession is required)

Proposed change Page 55 Agree with the fixed lease no termination

See section 11 Compensation on termination of any lease.

Whether fixed or periodic lease arrangements, tenants own their home and require the same protection under the law. To differentiate between the two creates two

distinct groups who reside in the same style of accommodation under the same legislation. The Law needs to be equal and encompassing for these two groups.

Disclosure documentation needs to be evidenced at the time of eviction by the responsible body, to ensure detailed disclosure information was provided at the time the lease was signed. If this is not forthcoming from the Park operator then a higher level of compensation should apply.

The proposed 'continuity of disclosure' which would detail the park being placed for sale, would provide tenants with a longer time period to adjust to the possibility of vacant possession being required.

10.4 Impact of Park owner insolvency – mortgagee possession

With new buyers coming into the market, possibly similar to NSW and Queensland, who may have large mortgages the likelihood of insolvency increases. Park operator insurance cover in the event of insolvency should be mandatory, if available.
When new Park tenants are made aware of the financial arrangement of the Park operator they may have the option of seeking insurance protection in the event insolvency occurs, from their insurance company. Tenants on fixed leases would see out their term.

10.5 Recognition of a tenant

The proposed change as identified on Page 61 is supported.
PHOA believes both parties should have access to SAT if leasing arrangements are not agreed to.

11 Compensation

Compensation for tenants being evicted from their Park, regardless of their leasing arrangement, has been a major concern for PHOA since its inception in 1998. To date these concerns remain unresolved.

11.1 Determining compensation – fixed term tenancies

Option B as listed on Page 64 would, PHOA believes, add strength to the already existing provisions contained in the Act. Any extra cost on the Park operator would be known at the point of signing up the tenant and also at the time of placing the Park for sale. Like most property sales, costs such as mortgage payouts, and other expenses should be taken into account when pricing the property for sale.

Extra factors to take into account:

- Location of the home e.g. currently on water front; now moving to a country location.
- Support the extra factors as listed on P. 64 Option B

11.2 Compensation on termination of a periodic tenancy

Option B as listed on Page 69 is supported by PHOA. While this option, put forward is not supported by DOCs, it is the desired option for all tenants.

PHOA believes a residential period of five (5) years should apply for long-stay tenants to benefit from compensation in the event the Park closes down.

Park operators who wish to reduce their exposure to compensation payments by offering less than five years accommodation should have to make it clear, at the time of offering a tenant a lease that it is for a period not exceeding five years. This arrangement, made clear at the initial interview, allows the prospective tenant to either accept the lease arrangement or seek an alternative site/home more suited to their needs and for the Park operator to have their wish for 'flexibility'.

- Failure by a Park operator to state clearly in the Disclosure Statement that the tenancy is for less than five years should result in a substantial fine being imposed. Such a fine should reflect the serious impact failure to disclose has on the unsuspecting tenant. **Suggested no less than $20,000.**
- Tenant to receive compensation as determined by SAT

11.3 Compensation at the end of a fixed term tenancy

PHOA recommends Park residents on a fixed or periodic lease are entitled to compensation at the completion of five (5) years residency if eviction occurs. Such a shift in the legislation would offer greater protection for residents. We strongly believe that changes in compensation laws would also greatly assist the Caravan Park industry to attract long-term investment into the industry. Investors having a commitment to the industry, who will reap the benefits of having permanent residents delivering a reliable, predictable income stream can only positively add to the profile of an industry that is sadly lacking any demonstrated commitment.

11.4 Compensation on relocation within a Park

PHOA agrees with the Department's Option A on Page 72

- Leases need to show right to compensation plus movement to a 'similar site'.
- Relocation costs to include external costing's e.g. carport, paving commensurate with the tenants existing amenities.

12. Death of a tenant – liability of a tenant's estate

The Department's **proposed change** listed on Page 75 is agreed with. If the lease expires on death then the beneficiaries of the estate should

- be made aware, in writing, of their rights, any fees applicable to the home currently e.g. site rental and fees relating to the sale of the home
- Options should be made available to the beneficiaries for the site rental to accumulate and be deducted on sale of the home.

12.2 Home Owners

PHOA believes there should be a time limit applied to the ongoing payment of site rental costs.

- **Site rental should not exceed six (6) months from the time of death.** In Parks where the Park operator has homes for sale, the sale of a home on a site that is attracting a regular rent, with no expiry date, is attractive. There is

no incentive for the Park operator to facilitate the sale of a deceased's home without time restrictions being applied to the ongoing receipt of site rents.

- **Time restriction for ongoing payment of rent to be a maximum of six months to apply from the date a death.**

- **Tenant's executor to receive in writing from the Park operator information detailing the date the rent will cease.**
- The Park operator could also include in that correspondence any agreed arrangements for the payment of rent during the notice period.
- All fees expected to be paid to the Park operator by the estate to be in writing.
- Time restrictions should also be applied to NLSV residents who have either died or were required to vacate prior to the sale of their home. Example is where a tenant needs to enter into residential care.

13 Termination of tenancy for damage to property and violent behaviour

Termination of tenancy is a serious decision that greatly impacts on both the tenant affected but also on security for the remaining tenants. Feelings of ' will it happen to me' if the termination is seen 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; for example under 5 years no compensation payable.

Violence and/or destruction of property by a tenant should be a punishable offence. However, safe guards are needed to ensure the evicted person knows their rights. Residents who behave in an unacceptable manner, which endangers other tenants or property, have usually exhibited concerning behaviours over a period of time that may not have been adequately addressed by the Park operator/Manager. If termination notices are given to tenants who have not been cautioned about inappropriate behaviour, then poor management of the Park should be a factor for SAT to take into consideration. (See Dispute resolution Section 20)

- Disciplinary orders to lapse after twelve months or Park operator to show why they should remain in place. (sunset clause) SAT
- SAT to have jurisdiction to assess the appropriateness of any continuation of Disciplinary orders given to tenants by Park operators.

14 Park rules

14 B is supported as it involves consulting with the PLC and tenants.
Changes to rules can be imposed on tenants without consultation and with no explanation as to the reason for the change. Park tenants are, generally, captive tenants who have minimal say on changes that occur in the Park.

- Park rules should be a discrete document given to the new resident, along with other documentation, prior to making a decision to buy into the Park.
- Use layman's language
- Legislation to state the need for the rules to be signed by both the tenant and Park operator to indicate their receipt.
- Include the rules as an addendum to the lease to provide a legal structure

- Make very clear in the Park rules the consequences for non-compliance

This change would require very little extra work on the part of the Park operator, a one off action, to be photocopied for each new tenant.

15.1 Rent variation

A survey carried out in NSW in 2012 found that 90.6% of residents living in Parks were on a fixed income. In WA PHOA's interaction with its member's supports a similar situation is likely in WA. Most WA Park tenants on a pension would be in receipt of Centrelink Rent Assistance. This assistance increases until a cut-off point is reached thereafter further rent increases eat into the base pension. In the previously mentioned NSW study 50% were paying out 33% of their base pension on rent. Rents in WA are increasing now at a level far quicker than in the previous 10 years. A rental survey conducted by PHOA in 2013 received responses from 19 Parks. Seven respondents stated rents were by market review, the rest a mixture of CPI plus a % or a set percentage each year 5% or 6%. Centrelink Rent Assistance is related to the CPI. When rent increases in a Park exceeds the CPI increase tenants financial resources diminish each year this occurs.

Market review of rents requires that similar Parks are compared in determining the increase. It is difficult to compare Parks. The condition of Parks varies considerably. Geographical locations are not suitable for market valuations due to variations in presentation, conditions and facilities provided. Should market review be approved any increase in rents using this method needs to be justified at a SAT review.

15.2 Method of varying rent

Where CPI applies to existing agreements they should not be changed in a negative way.

- State CPI is the method recommended to assess all rent increases
- Market review to be disallowed for assessing rental increases. (Queensland Act disallows market review for assessing rental increases)
- Rental increases for permanent Park residents should be independently assessed by SAT. Park operator to apply for an increase to SAT. The responsibility for justifying a rental increase is with the Park operator and so to the onus on providing all the necessary figures. This arrangement would help equalise the Park operator/tenant relationship.
- Presentation of detailed expenses and projected expenses from the Park operator for each tenant at the time of rental reviews should be provided to permanent tenants on request. This is a requirement in Retirement Villages where many residents do not own land or the residence e.g. Lease for Life

This would not impose a great increase in administrative work for the Park operator as, under good business practices, they would have these figures available due to account keeping and/ or the auditing of their finances at the end of the financial year. The same information would go to each resident, one set of information and the cost of several photocopies.

15.3 Unforseen costs

Most costs related to the running of a Park are predictable. Businesses and their accountants plan ahead for increases in rates and other unavoidable costs.

- Unforseen costs need to show a direct relationship to long-stay Park tenants.
- Disclosure Statement to state the rises in rents due to increased running costs will occur.
- **Last three year rental increases to be disclosed to new tenants in the Disclosure Statement plus method of calculating rent increases.**

Some cost increases in Parks are a one off and do not continue ad infinitum; for example the installation of a pool or children's playground. If the facility to be provided is for the exclusive use of the tourist section of the Park then **permanent residents should not be expected to pay.**

- No raising of rent to pay for a facility that will not attract ongoing costs.
- Unforseen costs should not include repairs required to ensure the health and safety of residents.
- Capital expenditure in business attracts a tax deduction which needs to be shown when applying a levy on tenants.
- Rent increases should not rise due to capital expenditure
- If the extra charges are fully disclosed during consultation and a reasonable method is used to obtain funds for the expense there may be no need for the Park operator to refer to SAT.

16.1 Cost recovery in relation to Fees

The Proposed change on page 96 is supported.

As stated above disclosure of all costing's in relation to the rationale for a (levy) or rent increase should be mandatory.

- The time period for any levy or rental increase should remain at 60 days prior to the increase occurring

16.2 Costs of tenancy agreement

The proposed change on page 96 is supported.

Past information from PHOA members has indicated some Park operators setting a fee of, in one instance $500 for the processing of a lease. At the time of this occurring one tenant had already moved into her Park Home. She felt obliged to pay even though the fee had not been discussed during the initial interview. Most leases are copies of previous ones issued to tenants and just require photocopying, therefore, charging each tenant for the same document should be unlawful.

16.3 Visitors fees

There is no justification for charging fees for people staying in a self-contained Park Home.

- Option D is recommend for permanent park home residents.

This option recognises tenant's self-sufficiency, therefore, no cost for the Park operator for the use of facilities. Tenants pay for their utilities when fully self-contained.

- For tenants residing in caravan parks with shared facilities then **reasonable** overnight fees are acceptable. An example of 'unreasonable' $15.00 per night for a pre-schooler to stay with the grandparent overnight. These fees need to be disclosed in the Disclosure Statement. Any change to these fees should be in writing outlining reasons for increases and attract a 60 day notice period.
- There should be no charge for a carer staying over. To impose such a fee could lead to a tenant refusing help resulting in illness or physical harm. Many tenants requiring a carer may be elderly and on a finite income.

16.4 Entry fees

Agreed that this section of the Act remains as it currently is.

Shared Equity

PHOA opposes any form of Shared Equity being offered to persons wishing to purchase a home in a Park. The reasons being:

- Shared equity exists in the Eastern States and has been shown to have been abused by Park operators by inflating the value of the home at the point of sale. Some tenants who entered into these agreements found, on selling, they owed more than the home was worth.

Shared equity is attractive to people who have few options for owning their own home.

- This method of Park home ownership is dangerous without clear safe guards incorporated into the Act which should include an independent valuation of the home for sale. As with Reverse Mortgages there are some nasty traps for the unwary. Once caught in the Shared Equity trap there can be a high price to pay for the tenant who wants to get out.
- Any form of shared equity in Park Homes should not occur until legislation is introduced to protect the tenant.

16.5 Exit Fees

Amendment B on page 104 is complicated and confusing. If adopted it would require a significant amount of administrative work on the part of the Park operator. PHOA is concerned that shortcuts will be taken resulting in insufficient information being given to the tenant. To overcome this it is far preferable to have **one fee** on exiting the Park; **either an exit fee or a sales fee.** The chosen fee needs to be stated in the Disclosure Statement in **dollars and cents not percentages**. Monitory statements can be easier to understand than percentages.

- **A set fee on exiting the Park is recommended. Fee to be stated in the Disclosure Statement.**
- **No other fees allowed on exiting the Park**
- **If fees not stated in the Disclosure Statement they will be unenforceable**

Given the sale of a tenants home can be held up due to conflict around exit fees, DOCs to become involved to assist both tenant and Park operator in clarifying the legislation in this matter; **conciliation.** To refer the matter to SAT would likely result in a substantial time delay and possibly cause the sale to fall through. A referral to DOCs Conciliation process could have the matter clarified quickly.

16.6 Paying for electricity

PHOA believes any action that sets out the financial regulations within a Park would be beneficial to all parties. 16.6 B would appear to clarify the charging of electricity for all concerned.

17.1 Maintenance and facilities promised by the Park operator

Shared facilities that are promised by Park operators need to be detailed in the contract of sale.

- A date by which facilities will be functioning needs to be included in the contract. If the facilities are not forth coming within the specified time then tenants should be reasonably compensated.
- Tenants who receive promises verbally which are not forthcoming should be eligible for reduced rent.

Tenants buy into a Village for a variety of reasons, some of which are the promise of future facilities or services. Failure to deliver the promised service or facilities should be a breach of contract and treated accordingly.

17.2 Ongoing maintenance and repair

Option B is supported.
Maintenance and repairs within the common areas of the Park should be kept up to a standard that is safe and poses no health threat to tenants.

17.3 Transparency in relation to maintenance costs

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. Failure to produce the requested financial information would allow the tenant to apply to SAT for access to the relevant records. There have been incidences in the past of financials being requested by a tenant to verify the reason for cost increases only to be refused access to these figures.
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Option B is supported.

17.4 Funding capital improvements

Capital improvements are a decision of the park operator it is not the tenants' responsibility. Capital expenditure is a planned activity that requires funds be set aside overtime for, what are generally, major expenses. Capital improvements result in increasing the value of the Park operator's business/property. The rents that permanent tenants pay should cover the cost of running the Park Home Village. These permanent tenants should not be **used** as a source of revenue to improving the Park operator's property.

18.1 The right to sell the home while it is situated at the Park

Option B supported.

- Park operator loses a fee but retains control over the process and has an exit fee and an administration fee.
- He is informed of the sale and needs to interview the prospective tenant.
- Operator to provide all legal documents relating to his park and park living.

18.2 Interference in sale by park operator

PHOA is supportive of the proposed change in relation to the sale of homes in caravan parks.

18.3 Useful life of a park home

When a Park Home is purchased, new, from either the manufacturer or the Park operator the date of sale would be recorded on the contract.

- Date of purchase to be included on the Disclosure Statement if the Park operator is responsible for the sale or added to the Contract of Sale by the Park Home owner when selling the home.
- The difficulty for current Park Home owners could be in locating the date of manufacture if they were not supplied with it at the time of purchase. In this event the Park operator may be of assistance in assessing the likely age of the home. Alternatively a Park Home manufacturer may be of assistance.
- Work required on the Park Home at the time of sale needs to be clearly stated in the contract of sale by the seller.
- The life of a Park Home may vary depending on its geographical location. The difference between Park homes and brick and tile homes in relation to depreciation needs to be clearly explained to prospective tenants.

18.4 Extent of park operator involvement in the sale process

A combination of options B & C should see all parties to the sale provided with timely information in relation to the prospective sale of a home. Below are PHOA's suggestions:

- Park operator to be informed in writing by the home owner, if selling their own home, of their intention to place their home for sale.
- If an agent is appointed to sell the home, the agent's name and contact details to be provided to the Park operator by the home owner.
- The Park operator to be informed by the home owner/agent of a prospective buyer's interest in purchasing the home.
- The prospective buyer to be referred to the Park operator, by the home owner/agent, for assessment as to their suitability for Park living.
- Park operator, on approving the buyer, to provide all documentation to the buyer, as required under the Act. Park operator to ensure the buyer is informed of the cooling off period.
- Park operator to inform the Home owner/agent of the proposed purchaser's acceptance for entry into the Park.

- Home owner to provide the prospective buyer with written details of the home for sale. E.g. age of home, maintenance required, maintenance recently carried out, valuation if available.
- Failure to approve a prospective tenant needs to be communicated to the home owner/agent in writing. This communication provides the home owner/agent with a rationale for the sale not proceeding.
- Where the Park operator owns Park Homes within the Park **they should not be involved in the sale of tenants homes**. There is a conflict of interest on the part of the Park operator in becoming involved in the sale of a tenant's home when they also have homes in the Park for sale. There is no incentive to sell a tenant's home when site rent is being received and the Park operator has empty homes for sale.
- If the tenant is unable to conduct the sale of their home then an independent sales representative could be sought by the tenant to conduct the sale.
- Failure to make a clear distinction between conflicts of interest and act to ensure 'fairness' should result in the Park operator losing any exit fee or administrative fees and/or paying such fees back to the tenant.

18.5 Creation of tenancy rights for the purchaser

Option C is supported for the following reasons.

- The issuing of a new lease by the Park operator allows for further assessment of the purchaser and ensures control over who enters the Park.
- As the Park operator is responsible for ensuring all documentation under the Act is passed onto the prospective tenant, preparation of the lease is one of these documents.
- The rent at the time of purchase should remain the same as that paid by the seller. This allows the seller to more accurately quote the current site rental which is a major issue when selling a home.
- The terms of any new lease need to closely reflect existing tenants' terms. This ensures the seller can accurately inform the buyer of what they can expect if they chose to move into the Park.

The comment contained under option B & C relating to the Park operator's control over who enters the park would not be relevant if points as outlined in Section **18.4** are adopted.

Additional time and costs to the Park operator in relation to **18.4** and **18.5** may increase. This could be due to the current lack, in many Parks, of an organised administrative approach to interviewing and providing information to prospective buyers. Once the above suggestions are adopted, and home owners are made aware of their obligations when selling, then the sale of homes in Parks should follow a smoother path. It is often the lack of communication, especially in writing, that causes much confusion for both tenant and management. The rules around who is responsible for what when selling a home in the Park need to be clear. Who does what and when needs to be set out in the Park rules. At the time of buying a home the purchaser should be informed of their obligations to the Park operator when placing their home for sale.

18.6 Appointment of park operators as the selling agent

In reference to **18.1-5** above the sale of homes in Parks can be controlled by Park operators. They can decide who enters their Park even though they are not the selling agent. Reasonable fairness needs to exist in the control a Park operator has over another's property, even though it is sited on their land. The Park operator doesn't need to have control over the sale of a home on his land if clear rules are in place. Park operators can have a conflict of interest when appointing themselves as the sole selling agent. We refer to **12.2** once again as an appropriate method of instilling fairness and incentive into the selling process.

Option B is the preferred choice as it provides a choice to home owners while (**18.1-5**) ensures Park operators retain control over who comes into their park and should see prospective tenants receive all the necessary information as per the Act.

18.7 Commission for the Park operator acting as selling agent

Commission for the sale of homes in a Park should be clearly stated in the Disclosure Statement. All fees need to be stated at the time of the home being purchased, including if appropriate, sales commission, for transparency.

Option D is supported as this provides transparency for the prospective home owner.

- There are no legal matters, such as land transfers, to be managed when selling a Park Home or converted caravan. Thus charging the seller with a percentage similar to homes sold in suburbia is unconscionable. Commission should reflect the work involved in selling the property. Involvement by Park operators in the selling process varies considerably between Parks. A fee of two percent (2%) of the selling price would seem adequate.
- The seller should be consulted when setting the selling price of the home. Duplication of fees needs to be forbidden in the Act and any attempt to charge unlawful fees should carry a severe penalty for the operator and reimbursement for the tenant.

18.8 Fees payable to a park operator who is not the selling agent

Fees payable to the Park operator who is not the selling agent should reflect reasonable costs incurred when home owners change hands. Unless the Park operator can show reasons for a higher fee PHOA believes **$300** should be the maximum charged. Currently there can be nasty surprises for tenants selling their property in a Park if the tenant is unaware of the selling fee. Lack of information has resulted in the loss of a sale for one tenant.

- When changing regulations around the sale of homes in the Park, tenants need this in writing. This allows the tenant to provide buyers with up-to-date information on the Park rules and their obligations.
- Fee to be charged together with a rationale for the setting of the fee needs to be disclosed at the point of purchase of the home in the Disclosure statement.

Time, is involved for the Park operator when interviewing a prospective tenant, photocopying documents and ensuring the applicant has all the relevant documents under the Act. However, once a supply of all the necessary documents are obtained

and the lease is finalised there would be little extra demand on the Park operator's time as the package for new tenants should be readily available.

19 Park operator conduct provisions

The proposed changes to the Act as noted on page 139 are supported by PHOA. However, given that many park tenants have had little or no experience in bringing court proceedings and would see such actions as beyond their abilities, the SAT option would be limited to a few. In NSW the Tenants Union Residential Parks Team under the auspices of the Tenants Union, provide a solicitor to assist and represent tenants who live in Parks. This service navigates the legal system with them. This ensures all tenants have their rights preserved. In WA there is no service for Park tenants to approach for help. There needs to be provision for:

- The procedure under Dispute Resolution should be used where Park operator conduct is an issue impacting on the Tenant. (Section 20)
- Department of Commerce Consumer Affairs to be available for consultation and conciliation.
- Training of Park operators and managers in the Law and customer management skills.
- A TAFE course exists for Park managers-completion of this should be mandatory within a set time of appointment – 12 months.

Failure to simplify the system to achieve resolution of issues of law or operator behaviour is not helpful to either tenant or Park operator. Timely intervention by a person trained in conciliation could result in misunderstandings or misconduct being addressed quickly thereby, reducing stress on the Tenant and creating less work for the Park operator. Park operator/manager unconscionable behaviour requires a resolution that is quick and easy to institute.

20 Dispute resolution

On page 140 under **Dispute Resolution** last paragraph states "The Department also provides a free dispute conciliation service in relation to residential parks disputes'…. Little is known about this aspect of the Department's services. Throughout many disputes between Park operators and Park tenants PHOA is unaware of any occurrences where the Department has intervened other than Serpentine Village.

If the Department is serious about offering this service to tenants, tenants need to be informed that it exists, how to access it and who to contact. Tenants have reported to PHOA they receive little support from DOCs when in dispute with their Park operator/Manager. Constant referral in the CRIS to tenants having access to SAT indicates the Department does not fully understand the population they are preparing legislation for. As stated in this paper's introduction many tenants will just put up with their situation if appearing before SAT was their only option; without support from a knowledgeable independent source that could walk them through the SAT process or offer a conciliation service they are unlikely to resolve disputes and will continue to live in disharmony.
PHOA offers the following process consisting of four steps that would offer timely support for Park tenants and has the potential to save Park operator's time and money.

Dispute Resolution Process

1. A not-for-profit, COTA, Tenancy WA (Community Legal Centre for Tenants) Shelter WA or other such Tenancy service to provide the first step. Park tenants make contact by phone with an agency representative with some knowledge of the RPLS Act. This person ascertains whether the tenant's concerns are of a legal nature, a behavioural issue (fellow tenant or Park operator) or an issue that forms part of living in a Park. If the latter one then no further action would occur. However; clarifying the matter can, at times be all that is required to help the tenant understand the situation.
2. If the Tenant has a valid concern the agency or tenant would contact the Department to determine if the Conciliation Service was an appropriate way to proceed. If Conciliation is unsuccessful (Operator uncooperative) a written statement needs to be forwarded to the Park operator confirming him/her of their unwillingness to participate in a service aimed at resolving issues prior to mediation and/or SAT. then;
3. Mediation, which has a cost, would be the third step. As mediation can be a costly service to engage in, every effort to resolve the matter at point 2 should be made. Once again lack of participation by the Park operator needs to be acknowledged in writing from the Department.
4. SAT would be the final step if all the above steps failed to resolve the matter. At this point the tenant to be referred to either SAT for further advice on how to proceed and/or to a Community legal service for assistance in preparing their documentation.

Protection in the Act for tenants who take action against their Park operator from eviction is required ('without grounds' removal would negate this step)

Currently there is limited information either practical, knowing someone who has been through the SAT process, or information sessions run by either SAT or the Department of Consumer Protection, from which Park tenants can receive information about SAT. Such information sessions could well act to demystify SAT and encourage more Park tenants to pursue their concerns.

In the case of several tenants in a Park having the same issue with the Park operator a **joint action should be encouraged.**
The Possible change noted on P. 142 is approved but reservations exist in its ability to address the issues in a timely manner.

20.2 Powers of the SAT

20.2 (b) refers to the SAT being vested with specific power in regards to contracts. It has occurred that Park tenants have had their contracts altered after signing them. On having the contract returned to them after the Park owners also signed the contract they discover White Out had been used to alter parts of the contract. There was no consultation with the tenant as to the need to change any part of their contract. In another instance a tenant discovered their contract differed from the one the Park operator had. This was brought to light when the tenant was selling their Park Home. At no time were the tenants in question consulted about the changes to their contract. Therefore,

- PHOA believes SAT should, have the power to rule on any situation whereby contracts have been interfered with after the tenant has signed.

The SAT should also have the power to make a determination on any matter deemed to impact a tenant in a manner that disadvantages them in a serious way. Be this financially, emotionally or materially.

21.1 PLC

Unfortunately the options offered in the Discussion document would not enshrine PLC's within the legislation in a manner that protects tenants' rights to form a PLC. The following needs to occur if tenants are to have the right to form their own PLC's without management interference.

- Tenants are solely responsible for calling elections for PLCs
- Park operators or managers not to interfere in the PLC election process
- Tenants elected and approved by their fellow tenants as their representatives to be recognised by the Park operator as legitimate representatives of their tenants.
- PLC elections to be held every two years with all positions being declared vacant.
- Persons having served on the PLC can be re-elected if approved by a majority of tenants
- The formation of a PLC does not prohibit Residents meetings.
- There should be no minimum or maximum number of PLC/Management meetings each year but 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. SAT could be a last resort if a resolution is not reached.
- The PLC process to be enshrined in the Act
- The Commissioner's Guidelines on Park Liaison Committees booklet to be provided by the Park operator to PLC members on their election.
- New tenants to be given the PLC Chairperson's details.
- Department of Commerce or other agency to be available to advise new PLCs in the running of effective meetings, how to communicate with management, how to take minutes and provide feedback to their fellow tenants

There are, in some Parks, tenants who do not wish to form a PLC. They are either content with the manner in which the Park is run or their age or ability to enter into a group activity prohibits them from becoming involved. These circumstances need to be recognised as legitimate reasons for not forming a PLC. However, should management intervention, in any way, be responsible for the decision not to proceed with forming a PLC then the Dispute resolution procedure as outlined in Section 20 page 21 should be followed.

SUMMARY

The current review of the RPLS Act offers some partial solutions to security of tenure, compensation, eviction without grounds and Park operator behaviour. Section 42 of the Act, 'eviction without grounds' remains a concern given current proposals provide options for Park operators that could be unfairly used. The Dispute Resolution process relies on SAT intervention to resolve issues. PHOA's

recommendations offer a more orderly timely and cost effective method of intervention which if implemented could benefit both tenant and Park operator. PLCs by their nature will, PHOA believes, continue to be a source of contention leaving many tenants with no voice in their Park.

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Julia Lynch
President 2011-2014
Park Home Owners Association WA Inc
August 2014