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

CONSULTATION
REGULATORY IMPACT STATEMENT

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

JUNE 2014

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

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COMMISSIONER'S FOREWORD

I am pleased to release this Consultation Regulatory Impact Statement on the statutory review of the *Residential Parks (Long-stay Tenants) Act 2006*.

Residential parks are an increasingly popular form of long-term accommodation, particularly by seniors and retirees who value the facilities, communal lifestyle and sense of safety that are features of many residential parks.

The purpose of the review is to assess the effectiveness of the operation of the *Residential Parks (Long-stay Tenants) Act 2006* (RPLT Act). As a first step in the review, a discussion paper was released in August 2012 seeking preliminary feedback. The Department received a significant number of responses to that paper and I would like to thank all those who provided their input.

This Consultation Regulatory Impact Statement sets out options developed after analysing all of the feedback received in response to the discussion paper. The paper tests those options, sets out some of the pros and cons and seeks feedback from stakeholders. The options seek to balance the competing interests of tenants and park operators, by providing adequate protection for tenants, yet ensuring that the residential parks sector remains viable for operators.

I encourage everyone in the residential parks sector to take the time to consider this paper and provide feedback on the questions asked. I acknowledge that this is paper is lengthy, however this is necessary in order to comprehensively cover the issues raised by stakeholders. You may wish to provide input on all issues or only those of importance to you.

Your feedback will assist the Department in developing and submitting to the Government, recommendations for reform of the tenancy laws for people living long-term in the residential parks sector.

Anne Driscoll

COMMISSIONER FOR CONSUMER PROTECTION

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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
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.
Economics and Industry Standing Committee (EISC)	A WA Parliamentary Committee, which conducts reviews and reports to the Legislative Assembly.
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.
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.
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.
Residential Tenancies Act	The *Residential Tenancies Act 1987* - the Western Australian Act that regulates traditional tenancy arrangements between landlords and residential tenants.
RPLT Act	The *Residential Parks (Long-stay Tenants) Act 2006* – the Western Australian Act that regulates the tenancy relationship between park operators and long-stay tenants in a residential park.
RPLT Regulations	The *Residential Parks (Long-stay Tenants) Regulations 2007*
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.

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 need to be made to the RPLT Act.

Further, the review will assess whether the legislation adequately balances the needs 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.

Consideration will also be given to whether the legislation suits the divergent nature of the marketplace, which ranges from:

- mixed use caravan parks - offering both holiday accommodation and long-stay sites with limited certainty of tenure; through to
- lifestyle villages - marketed to those over 45 as offering superior standards of amenity and site leases for periods of up to 60 years.

1.2 PURPOSE OF THIS CONSULTATION REGULATORY IMPACT STATEMENT

The Western Australian Government is committed to a regulatory gatekeeping 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.

The purpose of this Consultation Regulatory Impact Statement (Consultation RIS) is to examine those issues being considered as part of the statutory review within a regulatory impact assessment framework. This paper presents possible options for reform and seeks feedback from stakeholders in relation to the viability of those options. In particular, the Department is seeking feedback as to the potential costs and benefits of the various options that have been presented.

1.3 PREVIOUS DISCUSSION PAPER

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.

In response to the discussion paper, the Department received 709 survey responses[1] and 81 submissions[2].The majority of respondents, both tenants and park operators, were from mixed-use caravan parks or lifestyle villages. The Department received few responses from renters or tenants and park operators from park home parks.

In considering the feedback as a whole, tenants were mainly concerned about security of tenure and ongoing affordability of park living.

Tenants appeared to have somewhat different tenure concerns, depending whether they reside in a lifestyle village or a mixed-use caravan park:

- mixed-use caravan park long-stay tenants were mainly concerned about not being offered a lease with sufficient tenure; and
- lifestyle village tenants were mainly concerned about unexpected events affecting tenure during a tenancy (for example, sale of a park or insolvency).

Park operators on the whole were concerned about laws limiting their ability to manage the park according to their needs.

The primary areas of concern about reduced flexibility appeared to differ depending on whether operators manage a lifestyle village or a mixed-use caravan park:

- mixed-use caravan park operators were mainly concerned about being locked into statutory minimum requirements for long-stay tenants (for example, minimum tenure and compensation); and
- lifestyle village operators were concerned about restrictions on the lease terms they could offer (for example, fees and charges) and standardised lease agreements.

The feedback to the discussion paper showed that other issues of concern include:

- park operator conduct, such as unconscionable or misleading or deceptive conduct; and
- situations where park facilities are not provided or not provided to an agreed or reasonable standard.

The feedback from the discussion paper has been used in formulating the options set out in this paper.

[1] comprised of 686 tenant responses and 23 park operator responses

[2] comprised of 44 submissions from tenants or their representatives, 26 submissions from park operators or their representatives, 8 submissions from government departments or independent statutory authorities, 3 submissions from individuals with an indeterminate perspective

1.4 STRUCTURE OF THIS PAPER

Due to the complexity and number of issues arising out of this statutory review this paper is quite lengthy. The paper is therefore divided into separate parts which outline the issue in question, propose options to address the issue and set out a preliminary analysis of the potential costs and benefits that might flow from the various options. Guiding questions are included in relation to each issue. Not all issues will be relevant to all stakeholders and respondents are therefore not expected to address all issues.

The options for reform have been presented in different ways, depending on the nature and complexity of the particular issue. In some instances a simple proposal for change has been suggested, in other cases more than one option is canvassed. In both cases stakeholder feedback will assist the Department in assessing the potential costs and benefits of any proposed reforms.

Parts 3 to 5 provide background information in relation to the legislative framework and the residential parks sector. Parts 6 to 21 set out the specific issues which are to be considered as part of this statutory review.

Key areas of interest are set out in the following sections:

- security of tenure - part 10;
- issues around costs of park living - parts 15, 16 and 17;
- sale of homes - part 18; and
- park liaison committees - part 21.

2 HOW TO HAVE YOUR SAY

2.1 MAKING A SUBMISSION

You are invited to make a submission to the Review. There is no specified format for submissions. You are welcome to:

- write a short letter outlining your views;
- respond to questions included in this paper; or
- complete a survey visiting www.commerce.wa.gov.au/consultations.

Who are you?

When making your submission please let us know which part of the sector you represent. For example, whether you are a tenant or a park operator, what type of park you live in or operate and whether you own your home or rent a home as well as a site.

Guiding questions

This Consultation RIS highlights a range of specific issues. It is not expected that all respondents will need to consider all issues. Please feel free to focus only on those issues that are important and relevant to you.

We have included questions after each issue. These questions are aimed at making it easier to make a submission. Please do not feel constrained by the questions or feel obliged to answer all of the questions.

You are welcome to raise additional issues and to suggest other options for overcoming issues of concern. It would be helpful if you could include the reasons behind your suggestions as this will help the Department to better understand your viewpoint and will also assist us in identifying the most suitable options for reform.

For example, you could couch your suggestion as follows:

> "I think that without grounds termination should be prohibited because……."

If possible, please provide evidence to support your views, for example by including relevant statistics, examples or case studies. If possible, please provide estimates of any costs that might be incurred in complying with proposals. This will greatly assist the Department in developing suitable proposals for addressing issues of concern.

Where to send submissions

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

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

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

Review updates

You can keep up to date with the progress of the Review at www.commerce.wa.gov.au.

How input will be used

The information gathered from this stage of the Review will assist in assessing the various options and developing proposals for reform for consideration by the Government during the next stage of the Review.

Information provided may become public

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

Submissions close

The closing date for submissions is: **12 September 2014**.

2.2 NEXT STEPS

Stakeholder feedback in response to this Consultation RIS will assist the Government in deciding whether reforms are needed and, if so, the shape of those reforms.

Following analysis of submissions to the Consultation RIS, a Decision RIS will be prepared. The Decision RIS will analyse the impacts of the various options and will be used by Government to guide its decisions. The Decision RIS will be published via the Department's website once the Government's decision is made public.

3 BACKGROUND

3.1 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.

The *Residential Parks (Long-stay Tenants) Act 2006* (RPLT Act) regulates the tenancy relationship between tenants and park operators in relation to long-term (non-holiday) tenancies in residential parks.

Currently, the RPLT Act does not apply to holiday-makers or residents who stay on a park for less than three months. The application of the RPLT Act to temporary or short-stay accommodation is considered at part 8.4 of this paper.

3.2 THE RESIDENTIAL PARKS SECTOR

According to the Australian Bureau of Statistics (ABS) 2011 Census data, [3] in Western Australia there are 15 432 dwellings in residential parks and 28 466 people residing in these parks.

As at July 2013, the Department estimates there are approximately 191 residential parks in Western Australia[4]. In the metropolitan region alone, there are approximately 3 900 long-stay sites and 34 residential parks (about 20% of the sector)[5].

3.3 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.

A number of unique issues arise in this sector for home owners, due to the fact that they own the residence (a depreciating asset), but only lease the land on which it is situated. 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 data[6], more than 50% of all people living in residential parks are aged between 50 and 69 years of age and approximately 20% of all people living in residential parks are aged between 70 and 99 years of age.

[3] Australian Bureau of Statistics 2011, Census of Population and Housing, Western Australia by Dwelling Location (Private dwellings, includes camping grounds and excludes non-private dwellings) Counting Persons and Dwellings, www.censusdata.abs.gov.au.
[4] Database of residential parks in WA 2013 Property Industries Directorate, Department of Commerce (adjusted).
[5] The Department's database of residential parks is complementary to, and largely consistent with, the ABS data despite differences in collection methods.

There are a number of reasons why people reside in residential parks, including:

- they can offer communal living at low-cost relative to other housing options, which would be attractive to older people and retirees who may be on fixed incomes;
- proximity to work, which may attract seasonal workers; and
- they are used as a housing option of last resort, for example crisis accommodation, and may become a longer-term arrangement.

3.4 TYPES OF PARKS

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

Mixed-use caravan parks

Mixed-use caravan 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 that are easily movable, to park homes that are relatively fixed.

Mixed-use caravan parks may be leased, for example from the local shire, or owned by a sole trader or through an association, partnership or company. Park owners or operators may offer periodic tenancy agreements, which provide operators with the flexibility to adjust the ratio of tourists and long-stay tenants, depending on the state of the relevant markets, or fixed-term tenancies.

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 park home owners living in manufactured homes rather than caravans and so the dwellings are not easily movable.

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-terms tenancies, of 30 years or more (sometimes up to 60 years), and access to resort style facilities. Lifestyle villages comprise park home owners living in manufactured homes, and are often marketed to people aged 45 years and over. Once again, dwellings are not easily moveable.

Park home parks and lifestyle villages offer operators a source of steady, reliable income in the short and longer terms. Park operators use a variety of business models, from large corporate entities which own a number of parks to smaller parks owned by sole traders or family groups.

[6] 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.

Strata titled caravan parks

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

Dwellings on strata titled lots might be rented or owned by the long-stay tenant and could be movable or relatively fixed. Tenants could be offered either periodic or fixed term tenancies. Strata park tenancies are currently covered by the RPLT Act.

Unlike mixed-use caravan parks, park home parks or lifestyle villages, each site in a strata park is capable of being owned individually. Consequently, strata parks and options to deal with strata park tenancies are considered separately at part 6.2 of this paper.

3.5 FACTORS AFFECTING THE SECTOR

While the number of residential parks in Western Australia appears to have remained relatively stable since 2004, 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 rewarding uses. These include residential subdivision, as land values have risen, particularly in prime coastal and metropolitan areas;
- 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 generally[7].

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 WA's park home parks and lifestyle villages).[8]

Residential park living is a divergent marketplace and this divergence creates considerable challenges for regulation of these varied tenancy arrangements.

[7] 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.

[8] 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 purpose of the RPLT Act is to regulate the tenancy relationship between the park operator and a long-stay tenant of a residential park, where the tenant either owns a dwelling and leases a site, or leases both 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 needs of residential park residents for greater security of tenure while supporting the maintenance of existing, and the development of new, residential parks.

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

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; and
- the unique nature of residential park tenancies in those instances where a tenant owns the home and rents the site on which the home is situated and relocation of these dwellings can be difficult and costly.

Market failure

The Department of Commerce is of the view that leaving the residential park market to operate competitively and without regulation would not deliver the best outcomes for long-stay tenants, park operators or government. Regulation of the tenancy relationship between a park operator and long-stay tenants was necessary because of the following market failures:

Market power

Housing is a basic human need. The demand for accommodation exceeds supply, which potentially enables providers of accommodation, including park operators, to exert a degree of control in this market. Without regulation in this area, operators could exert their market power through actions such as immediate evictions and arbitrary rent increases.

The risk to government, in addressing issues arising as a result of relocation of tenants, increases in an unregulated market.

Regulation attempts to fetter the potential misuse of this market power through the creation of systems to deal with matters such as tenancy terminations, including minimum notice periods and statutory compensation provisions[9] to enable tenants to find, and meet some of the costs of, alternative accommodation. In addition, regulation provides for an independent dispute resolution process.

Externalities

Park living generally involves communal living and can include the provision of shared premises. In such an environment, long-stay tenants may engage in behaviour that imposes unintended costs on other long-stay tenants, such as creating a nuisance within the park. Regulation is a mechanism to affect tenants' behaviour to reduce or minimise the incidence of negative externalities. The provision and enforcement of park rules is an example of such regulation.

Information asymmetry

Park living involves the ongoing provision of accommodation, rather than a market transaction that begins and ends at a point in time (usually with the exchange of a good or service by one party for money by the other). Consequently, there are a number of matters that need to be considered, discussed and negotiated at the commencement of a park tenancy. These matters include provision for, and disclosure of, fees and charges throughout the life of the agreement, whether a tenant's owned dwelling can be sold on site, and the maintenance of premises in good repair over time.

In an unregulated environment, it is highly unlikely that all of the necessary matters would be contemplated and agreed before the tenancy commenced, and this may lead to uncertainty and disputation between the parties. Regulation is a mechanism by which minimum standards can be set down and information can be given to ensure the parties are aware of their rights and obligations.

Regulatory failure

In reflecting on the Government's decision to intervene in the residential park market it is necessary to evaluate whether that intervention has improved market outcomes, as regulatory failure can occur when the laws fail to meet stated policy objectives and the cost of regulation exceeds the benefits of doing so.

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. 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.

[9] The right to compensation applies in limited circumstances – see part 11 for more details.

However, in its 2009 Report, the Economics and Industry Standing Committee (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"[10].

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 complete security of tenure (such as would occur through the ownership of land) without fundamentally affecting the supply and business modelling underpinning 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[11]." 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.

4.2 ISSUES NOT ADDRESSED BY THE RPLT ACT

The RPLT Act regulates the tenancy relationships between tenants and park operators and, as such, cannot address broader issues affecting security of tenure, for example:

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

[10] 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.
[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 276.

5 LEGISLATIVE FRAMEWORK

5.1 KEY ASPECTS OF THE RPLT ACT

The RPLT Act regulates the tenancy relationship 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 brief overview, the RPLT Act:

- provides that long-stay agreements must be in writing, contain certain specific provisions and deal with certain specified matters;
- requires park operators to provide certain information and documents to tenants prior to entering into a long-stay agreement;
- makes provision in relation to park rules;
- regulates the charges that can be imposed by a park operator;
- makes provision for the payment of security bonds;
- makes provision for payment and variation of rent;
- specifies how a long-stay agreement may be terminated (including minimum notice periods and giving of default notices);
- specifies when a tenant or park operator is entitled to compensation;
- sets rules for the sale of relocatable homes on site; and
- provides for the establishment and operation of park liaison committees.

The State Administrative Tribunal 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 keeps a register of licences issued. The register includes the number of short-stay sites, which cannot be occupied consecutively for more than three months, and long-stay sites, for each park.

The CPCG Act requires park licences to be renewed annually[12]. Both park operators and long-stay tenants have expressed concern that the requirement for annual renewal of a park licence is an impediment to park operators offering tenancy agreements for periods exceeding one year. The *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 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.

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. However, whilst manufactured homes are defined as a vehicle under the CPCG Regulations, they are required to be constructed in accordance with the National Construction Code (the Code). The Code is the primary national building standard applicable to 'buildings'.

Despite the construction of manufactured homes being subject to the Code, there are no requirements for manufactured homes to be checked for compliance against the 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 relationship between landlords and tenants in relation to 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 amended[13] and these changes will be considered under this review as there may be some benefit in introducing similar provisions into the RPLT Act.

[12] *Caravan Parks and Camping Grounds Act 1995* - section 8 CPCG Act; Caravan Parks Camping Grounds Regulations 1997 - regulation 52.
[13] *Residential Tenancies Amendment Act 2011.*

Retirement Villages Act

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

There is 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.

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; and
- the permanency of tenure – greater security of tenure is provided for residents of retirement villages.

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.

The following table identifies the applicable legislation in each jurisdiction as compared to Western Australia. References to specific provisions of these Acts are included throughout this paper.

It should be noted that in some instances, the legislation will only apply to a specific segment of the market. On-site agreements are agreements for rental of both the site and home (with renters) and site-only agreements refer to agreements to rent the site only (home owners).

	Legislation	What it regulates
Western Australia	*Residential Parks (Long-stay Tenants) Act 2006*	On-site agreements Site-only agreements
	Residential Tenancies Act 1987	Fixed term agreements (on-site and site only) entered into before 3 August 2007.
New South Wales	*Residential Parks Act 1998* – to be repealed	On-site agreements Site-only agreements
	Residential (Land Lease) Communities Act 2013 – assented to, but not yet commenced	Site-only agreements Community aspects of park living for all tenants. On-site agreements will be regulated by the *Residential Tenancies Act 2010.*
Victoria	*Residential Tenancies Act 1997*	Part 4 – on-site agreements and site-only agreements (caravans) Part 4A – site-only agreements (park homes)
Queensland	*Manufactured Homes (Residential Parks) Act 2003* (Qld)	Site-only agreements for manufactured home parks.
	Residential Tenancies and Rooming Accommodation Act 2008 (Qld)	Site-only agreements (caravan parks) On-site agreements
South Australia	*Residential Parks Act 2007 (SA)*	Site-only agreements On-site agreements
Tasmania	*Residential Tenancies Act 1997*	No specific reference to residential parks. May apply if caravan or park home is a person's principal place of residence.
	Code of Practice for Caravan Parks in Tasmania	Voluntary Code – developed by Caravan Industry Australian Tasmania in consultation with Consumer Affairs and Fair Trading.
Northern Territory	*Caravan Parks Act 2012*	On-site agreements Site-only agreements
Australian Capital Territory	*Residential Tenancies Act 1997*	On-site agreements Site-only agreements May be classed as a residential tenancy agreement or an occupancy agreement.

6 SCOPE OF TENANCIES COVERED BY THE ACT

6.1 RENTERS OF BOTH SITE AND DWELLING

Issue

An issue to be considered as part of this statutory review is whether the RPLT Act is the appropriate legislation for regulation of renters.

Currently, renters of both the site and the dwelling in a residential park are covered by the RPLT Act. Renters are predominantly located on mixed-use caravan parks and strata titled parks, but may also be located on park home parks.

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.

For example, on a residential park, a number of renters may live in close proximity and rent from a common operator/owner[14]. As a result of these communal aspects:

- the rented premises may include the non-exclusive use of shared facilities, such as a communal swimming pool or general recreation area;
- a park based communication forum is utilised as an efficient way for park operators and tenants to share information;
- there may be a set of park rules that outline the conduct expected of both long-stay tenants and tourists, such as noise and speed limits; and
- an operator/owner could consider moving renters from one site to another within a park.

Objective

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

Discussion

The table at part 5.5 gives a brief overview of the legislation applicable in other jurisdictions. Currently, New South Wales and South Australia, like Western Australia, have a specific set of laws to deal with both renters and home owners in residential parks and a separate statute for general residential tenancies.

[14] This is not usually the case if the park is strata titled and this situation is discussed separately, in part 6.2.

However, in New South Wales, it is understood that recent legislative amendments will see most aspects of tenancy arrangements for renters regulated under the *Residential Tenancies Act 2010* (NSW). The new *Residential (Land Lease) Communities Act 2013* will regulate tenancy arrangements for home owners and the communal aspects of park living for all tenants, including renters, such as operator responsibility for common areas, matters relating to 'community (park) rules' and the establishment, functions and membership of a residents' committee.

In other jurisdictions where renters are covered by general tenancy laws, specific provisions have been included within those laws to deal with the community aspects of park living.

The discussion paper raised the question as to whether it would be appropriate to return the regulation of renters to the Residential Tenancies Act.

Of the 81 submissions received, six respondents supported this, while two respondents expressed opposition. It is not known whether any of these submissions were from renters.

Those who supported moving park renters to the Residential Tenancies Act cited the differences between renters and home owners and the similarities between renters and general tenants. Those who supported leaving renters in the RPLT Act cited familiarity with the provisions of the RPLT Act and sufficient differences between renters and general tenants to retain coverage of renters within the RPLT Act.

Consideration of options

Currently, there are differences between the regulatory approaches of the RPLT Act and the Residential Tenancies Act in many of the issues identified in the discussion paper. These differences are due to:

- the communal aspects of park living, as outlined above;
- structural and historical differences in the development of the two statutes; and/or
- recent amendments to the Residential Tenancies Act.

If regulation of renters continues under the RPLT Act, it is possible that the differences in regulation between them and other tenancies may become greater over time, as each statute is reviewed and amended at different times. If the regulation of park renters is moved to the Residential Tenancies Act and the communal aspects of residential parks remain regulated under the RPLT Act:

- the laws dealing with park tenancies and other tenancies would remain similar over time as they would be contained in the one statute;
- there may be confusion in determining the most appropriate dispute resolution forum, if the dispute involves contractual and communal aspects of the tenancy; and
- operators (and renters) would potentially be required to understand and comply with two statutes and this situation may cause confusion.

Proposal – continue regulating renters under the RPLT Act

Although regulating renter tenancies under the Residential Tenancies Act would maintain consistency with general tenancy laws, it is proposed that these tenancies continue to be regulated under the RPLT Act for the following practical and administrative reasons:

- in WA, particularly in mixed-use caravan parks, park operators may have a combination of both park renters and owner-renters within the one park, park operators will therefore only have to familiarise themselves with one statute in dealing with tenancy arrangements on the one park. (As it is, operators also need to be familiar with other laws impacting their park, including the CPCG Act);
- there would be clarity about the forum for dealing with disputes;
- the RPLT Act already contains provisions about the communal aspects of park living, such as the making of park rules and responsibility for the cleanliness and repair of shared facilities; and
- requiring that renters be regulated under the Residential Tenancies Act (as they were prior to the enactment of the RPLT Act) may create confusion and there may be transitional and practical issues that arise to complicate compliance.

As part of this review consideration will be given to amending the RPLT Act for consistency with recent changes to the Residential Tenancies Act.

Issues for consideration	
Issue 6.1	*Do you agree with the proposal to continue to regulate renters under the RPLT Act? Why or why not?*

6.2 REGULATION OF STRATA TITLED CARAVAN PARKS

Another issue for consideration as part of this review is whether the RPLT Act is the appropriate legislation for regulation of tenancy arrangements in strata parks. There are estimated to be nine strata titled caravan parks (strata parks) in WA[15]. Long-stay tenancies in strata parks are currently covered by the RPLT Act[16]. A strata park is a special type of residential park that requires specific examination.

Strata park tenancies share similarities with general tenancies – individual ownership

In some ways, long-stay tenancies in strata parks are like tenancies in multi-unit strata complexes (for example, a block of units) which are covered by the *Residential Tenancies Act 1987*. 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 for rented sites (as there would be a number of landlords for rented units in a multi-unit strata complex).

[15] Since 1 July 1997, the strata titling of caravan parks has been prohibited under the *Caravan Parks and Camping Grounds Act 1995.*

[16] The RPLT Act does not cover survey-strata schemes.

Strata parks are therefore different to other residential parks, where one park owner or operator leases out all the sites in the complex and effectively creates a 'leasing community'.

Strata park tenancies share similarities with general tenancies – dealing with shared facilities

Strata parks are also like multi-unit strata complexes because both types of premises are subject to the *Strata Titles Act 1985 (ST Act)*, which contains provisions to deal with (amongst other things) the conduct of occupants on the premises and the maintenance of any common property. For example, the ST Act contains standard by-laws that can be modified by a strata company to suit the complex about matters such as keeping pets, restrictions on noise and supervising children on common property. The ST Act also requires the strata company, made up of all owners, to maintain the common property on the park.

As a result of the operation of the ST Act, there may be some overlap between the operation of the ST Act and RPLT Act in dealing with shared facilities and conduct rules on strata parks.

Mixed-use caravan parks, on the other hand, which are not subject to the ST Act, need specific provisions to deal with conduct and the use of shared facilities. The RPLT Act recognises the need for park operators to make 'park rules' and places an obligation on the park operator, subject to any alternative arrangement negotiated between the parties, to maintain shared premises[17]. Underlying these provisions of the RPLT Act is the assumption that there is one owner leasing all the long-stay sites in the park, which may not be the case in a strata park.

Strata park tenancies share similarities with mixed-use caravan parks

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 both renters and home owners. The RPLT Act has specific provisions to deal with both types of tenancy.

Issue

Complaint data obtained between 2007 and 2013 does not suggest any systemic tenancy issues for strata parks. However the most appropriate form of regulation for strata park tenancies is itself an issue because:

- 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 ST Act; and
- the ownership structure in a strata park is different from that contemplated by the RPLT Act.

[17] RPLT Act - section 32(2)(e), Schedule 1, clause 7

Objective

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

Discussion

The following table provides a summary of the current provisions of the RPLT Act and the Residential Tenancies Act in dealing with some of the issues for strata park tenancies.

ISSUE	RPLT Act		Residential Tenancies Act
Current scope	PARK RENTERS	HOME OWNERS	RENTERS
Dealing with shared facilities	Contains provisions to deal with shared facilities. (These provisions may overlap with the ST Act)		No express provisions to deal with shared facilities. (The ST Act deals with shared facilities).
Park rules	In strata parks, sites may be individually owned. The RPLT Act deals with park rules as it is assumed there is one park operator for all the sites in the park, but there are currently no express provisions for site rules to be made by a site owner in a strata park.		Not applicable.
Park liaison committee	The RPLT Act provides for one or more representatives of the park operator on a park liaison committee for parks with 20 or more long-stay sites. On a strata park, the site owners would need to agree about representation. Determining responsibility for maintaining and convening a park liaison committee may be difficult on a strata park with more than one site owner.		No express provisions for park liaison committees.
The termination of a periodic tenancy 'without grounds' by a lessor/site owner	Site owners must give a minimum of **60 days** to terminate a periodic tenancy 'without grounds.'	Site owners must give a minimum of **180 days** to terminate a periodic tenancy 'without grounds.'	Lessors must give a minimum of **60 days** to terminate a periodic tenancy 'without grounds.'

ISSUE	RPLT Act		Residential Tenancies Act
Current scope	PARK RENTERS	HOME OWNERS	RENTERS
The termination of a tenancy when a site is sold subject to vacant possession and compensation	Site owners must give a minimum notice of **60 days** to terminate a fixed term agreement during the currency of the fixed term. In this situation, the RPLT Act provides for the renter to be compensated by the operator for loss incurred as a result of the termination of the agreement.	Site owners must give a minimum notice of **180 days** to terminate a fixed term agreement during the currency of the fixed term. In this situation, the RPLT Act provides for the home owner to be compensated by the site owner for loss incurred as a result of the termination of the agreement.	Lessors cannot terminate a fixed term agreement by issuing a termination notice during the currency of the fixed term. In this situation, compensation is not applicable.
On-site sale of tenant owned dwelling	Not applicable	The ability for a home owner to sell their home on-site is negotiable between the tenant and site owner. If the parties agree in writing, a site owner can act as the selling agent and the commission to be paid must be specified in the agreement.	Not applicable

The relevant tenancy laws applying to residential parks in New South Wales, Queensland, South Australia and Victoria do not expressly indicate whether their laws apply to strata schemes. However, the *Residential (Land Lease) Communities Act 2013* (NSW) [18] expressly excludes "a place that is wholly subject to a strata scheme or community scheme."

Options

Options for continued regulation of strata parks include:

- continue to regulate strata park tenancies under the RPLT Act (including any amendments made as a result of this review); or
- move regulation of strata park renters to the Residential Tenancies Act and retain regulation of strata park home owners in the RPLT Act with amendments.

In the discussion paper, it was proposed that strata park tenancies be covered under the Residential Tenancies Act. One submission was received, which supported the proposal and the respondent suggested there was general support in the respondent's park for the proposal.

[18] Section 8(1)(b)

However, regulating all strata park tenancies through the Residential Tenancies Act has not been presented in this paper as it is no longer considered viable because:

- it would require significant amendments to be made to the Residential Tenancies Act to accommodate strata park home owners, for example dealing with on-site sales of tenant owned dwellings, with only very few parks and tenancies being affected; and
- there could be transitional issues as some existing strata park renters may have fixed term arrangements for a significant duration.

Option A – All strata park tenancies continue to be covered by the current provisions of the RPLT Act

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 (including any amendments made as a result of this review).

Site owners who rent out both a dwelling and a site on a strata park should note that the Residential Tenancies Act has recently been amended, affecting matters not outlined in this summary. Some of the amendments to the Residential Tenancies Act, such as prescribed lease agreements and property condition reports, are already required under the RPLT Act (although separate forms are prescribed under each statute).

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – regulation of strata parks to continue under the RPLT Act, with some tailoring of provisions	• Parties would only need to be familiar with amendments to the RPLT Act. • All home owners 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.	• 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	• It would ensure similar regulation for traditional tenants and strata park renters in the short and long-term.
	• It would ensure similar regulation for home owners regardless of the residential park being occupied, in the short and long-term.
	• Site owners and strata park home owners would only need to become familiar with amendments to the RPLT Act.
		• It 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.
		  • 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.

Preliminary assessment

The Department considers that partial or complete reversion to the Residential Tenancies Act would create unnecessary confusion and complication for both tenants and operators and that option A appears to have the most advantages and the least disadvantages.

Issues for consideration	
Issue 6.2(a)	*Do you live in, or operate, a strata park?* *Do you rent sites to both park renters and home owners in a strata park?*
Issue 6.2(b)	*Which option do you prefer? Why?*
Issue 6.2(c)	*Can you think of any other ways to regulate strata park tenancies? What are the advantages and disadvantages?*
Issue 6.2(d)	*What would be the cost implications of the different options, particularly for site owners of mixed-use parks? Please provide quantifiable information if possible.*

7 LIFESTYLE VILLAGES

For people who want to commit to the park lifestyle for an extended period of time, obtaining security of tenure is paramount. Generally, in these circumstances tenants will consider park home parks or lifestyle villages. These parks provide long-stay accommodation only (that is, no holiday rentals) to home owners.

Lifestyle villages generally offer tenants very long fixed-terms tenancies of 30 years or more, and access to resort style facilities. Costs of entry into a lifestyle village are generally higher than other residential parks; the risk for tenants in relation to early termination of a tenancy (for example, in the case of park operator insolvency) can therefore be quite high.

Park home parks offer varied tenancy arrangements, from periodic to long fixed-term tenancies of up to 30 years.

Issue

Lifestyle villages and park home parks are very different to mixed-use parks. It has been suggested that where the sole purpose of a residential park is to provide long-term residential accommodation, specific additional legislative requirements should be included in the RPLT Act for example, greater protections in relation to security of tenure.

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.

Discussion

In some other jurisdictions lifestyle villages, or manufactured home parks, are regulated separately to mixed use parks under separate legislation[19] or through use of specific sections in the relevant legislation[20].

The discussion paper raised the issue as to whether similar protections in relation to security of tenure to those set out in the *Retirement Villages Act 1992* (WA) should be included in the RPLT Act such as:

- a requirement that any successor in title (including purchasers or mortgagees) take title to the park subject to the rights and obligations of the park operator under any existing leases; or
- the use of a memorial on title to notify of the land use.

[19] *Manufactured Homes (Residential Parks) Act 2003* (Qld); *Residential (Land Lease) Communities Act 2013* (NSW).
[20] *Residential Tenancies Act 1997* (Vic).

In response to the discussion paper, tenants and their representatives indicated that they support the introduction of greater protections for security of tenure in lifestyle villages, including by ensuring that successors in title are bound to honour existing lease agreements. Tenant respondents noted that security of tenure was of particular importance, given that the costs in purchasing a home in a lifestyle village are often quite substantial.

Some operators of lifestyle villages expressed concerns as to whether financiers would be willing to finance parks if the land use was significantly limited, particularly through use of memorials on title.

The RPLT Act currently provides that 'lifestyle village' means a caravan park, or an area within a caravan park, that includes long-stay sites that are occupied, or intended to be occupied, solely or principally by individuals having a particular interest or quality in common.

Possible change

Consideration could be given to 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). For example, the requirement that any successor in title take possession subject to the interests of existing tenants is discussed in parts 10.3 and 10.4 of this paper in relation to termination on the sale of the park and mortgagee possession. It may be that these options are appropriate in the context of lifestyle villages and park home parks, even if they are not suitable for application in mixed-use parks.

The current definition of lifestyle village is very broad and would need to be carefully considered and amended if specific additional requirements are to be included in relation to those parks commonly referred to as lifestyle villages.

Issues for consideration	
Issue 7(a)	*Should specific provisions be included in the RPLT Act in relation to those parks that offer long-term residential accommodation only? Why or why not?*
Issue 7(b)	*If yes - what types of provisions should be included?*
Issue 7(c)	*How should these parks be defined?*

8 CONTRACTING OUT OF THE ACT

Section 10 of the RPLT Act provides that a long-stay agreement must be in writing and include such clauses and make provision for such matters as are prescribed. The RPLT Regulations set out standard forms for fixed-term and periodic on-site home agreements and fixed-term and periodic site-only agreements[21]. An agreement may, but is not required to, be in the standard form, however it must include all the clauses and other information set out in the relevant standard form agreement.

8.1 VARYING THE REQUIREMENTS OF THE ACT

Generally the parties to a long-stay agreement are not permitted to contract out of or restrict the operation of the RPLT Act[22], however certain provisions of the RPLT Act permit contracting out of the Act in certain circumstances.

Section 32(2) of the RPLT Act currently permits the parties to a long-stay agreement to contract out of certain prescribed rights and responsibilities upon agreement by both parties, including the following terms, set out in Schedule 1:

- term 1 – vacant possession;
- term 2 – no legal impediment to occupation of tenanted premises;
- term 5 – responsibility for cleanliness;
- term 6 – responsibility for damage;
- term 7 – park operator's responsibility for cleanliness and repairs;
- term 8 – compensation where tenant sees to repairs;
- term 10 – tenant's conduct on premises;
- term 12 – locks;
- term 13 – park operator's right of entry;
- term 14 – tenant's right to remove fixtures or alter premises;
- term 15 – rates, taxes and charges paid by park operator;
- term 16 – provision for assigning or subletting the premises; and
- term 17 – tenant's vicarious responsibility for breach of agreement.

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

- section 30 – which sets out the provisions concerning variation of rent under an on-site agreement, but provides that the section does not apply if an agreement expressly excludes or limits it;

[21] RPLT Regulations - regulations 4-7 and schedules 1-4.
[22] RPLT Act - section 9.

- 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; 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 of this paper.

Issue

A number of the provisions relating to the key rights and obligations of owners and tenants under long-stay agreements may be varied or excluded. Concerns have been raised about 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.

Discussion

At the time the RPLT Act was enacted, section 32(2) was consistent with the equivalent provision of the Residential Tenancies Act[23]. However, the Residential Tenancies Act has recently been amended to prohibit any form of contracting out of the provisions of that Act[24]. This amendment was made for consistency with other jurisdictions and to ensure that a fundamental set of rights and obligations for owners and tenants is protected.

In examining this issue in the context of the Residential Tenancies Act, the Department noted that many of the provisions that could be contracted out of pertained to the basic rights of owner and tenants. Given that the relationship between owner and tenant is seldom an equal one in terms of bargaining power, having the ability to contract out of certain rights and obligations could increase the imbalance to the detriment of one of the parties[25].

The Residential Tenancies Act does not permit the parties to contract out of the equivalent provision to section 30, but instead provides that the agreement may exclude or limit the right of the lessor to increase the rent[26].

With regards to the costs of preparation of the lease agreement, the Residential Tenancies Act provides that these costs are to be borne by the landlord[27]. The *Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA) has also recently been amended to provide that a landlord is not able to pass on the costs of preparing a lease to a tenant[28].

[23] Previous section 82(3).
[24] *Residential Tenancies Amendment Act 2011* – section 80.
[25] Review of the *Residential Tenancies Act 1987* (WA) – Policy Position Paper (January 2008).
[26] *Residential Tenancies Act 1987* – section 30(2)(b).
[27] *Residential Tenancies Act 1987* – section 55 - previously this provision could be excluded or modified, but this was changed with the 2011 amendments.
[28] Section 14B.

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.

In response to the discussion paper, tenants and their representatives were of the view that contracting out of any of the provisions the Act should be prohibited in order to avoid the potential for abuse or manipulation of contractual provisions. Tenants indicated that they have limited bargaining power when negotiating contracts and in some instances contracts were presented as 'take it or leave it', giving the tenants little opportunity for negotiation.

Park operators appeared to support the retention of the ability to contract out of the Act in order to allow for flexibility. However, a number of park operators did acknowledge that it was appropriate to prevent contracting out of certain key provisions of the Act, but that these should be limited to only those provisions reasonably necessary to protect the interests of both parties.

Proposed change

It is proposed that the RPLT Act be amended, consistent with the recent changes to the Residential Tenancies Act, 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. This would preserve 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.

Issues for consideration	
Issue 8.1(a)	*Is your tenancy agreement in the standard form?*
Issue 8.1(b)	*Does your tenancy agreement currently exclude or modify any of the RPLT Act provisions? If so, which ones?*
Issue 8.1(c)	*Do you think there are provisions in the RPLT Act which the parties should be able to contract out of? If yes, which ones and why?*
Issue 8.1(d)	*If contracting out of the RPLT Act is permitted, what safeguards should be put in place to ensure that tenants understand the implications of agreeing to a modification of their rights or obligations under the Act? For example, should there be specific disclosure or should the parties be required to specifically acknowledge the contracting out of the Act?*

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

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 a 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.

Issue

Some long-stay agreements contain provisions which provide that a tenant may not register a lease or lodge a caveat. The Department is concerned that this may restrict 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.

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.

Possible change

A possible way to address this issue would be to amend the RPLT Act to provide that lease provisions preventing a tenant from registering a lease or lodging a caveat are void.

Issues for consideration	
Issue 8.2 (a)	*Does your lease include a provision restricting the tenant's right to register the lease or lodge a caveat?*
Issue 8.2(b)	*Should the RPLT Act provide that a lease provision preventing a tenant from registering a lease is void? Please give reasons for your answer.*
Issue 8.2(c)	*Should the RPLT Act provide that a lease provision preventing a tenant from lodging a caveat is void? Please give reasons for your answer.*
Issue 8.2(d)	*What potential costs could be imposed on park operators if tenants are permitted to register leases or lodge caveats against the title?*

8.3 UNILATERAL VARIATION OF A CONTRACT

Issue

One of the standard clauses, which must be included in all long-stay agreements, provides that neither the park operator nor the tenant can vary the agreement unilaterally[29]. However, it should be noted that the park operator is able to vary the park rules, without agreement of the tenants. This is discussed in further detail at part 14 of this paper.

Objective

To limit the ability of the park operator to unilaterally vary a contract, but allow for flexibility so that changes can be made in appropriate circumstances.

Discussion

Some tenant respondents to the discussion paper expressed concern about the ability of a park operator to unilaterally vary 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.

It is also recognised that there may be some circumstances in which variation of a contract is necessary in order to address changes in circumstances.

Possible change

It may be necessary to strengthen the operation of the unilateral variation clause and clarify its interaction with the ability of the park operator to vary the park rules.

It may also be appropriate to include a provision in the Act giving the SAT the specific power to make an order varying an agreement. The powers of the SAT are discussed further at part 20.2 of this paper.

Issues for consideration	
Issue 8.3(a)	*Has your long-stay agreement ever been varied by the other party without your agreement? Please give details.*
Issue 8.3(b)	*Do you support the strengthening of the limitations on unilateral variation of long-stay agreements? Please give reasons for your answer.*
Issue 8.3(c)	*Are there any aspects of long-stay agreements which should be able to be varied? Please give reasons for your answer.*

[29] RPLT Regulations – Schedules 1 and 2 - clause 35; Schedules 3 and 4 – clause 34

8.4 ROLLING SHORT-TERM CONTRACTS

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 operator[30].

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.

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 arrangement. 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 park[31].

Objective

To ensure that the RPLT Act applies to all people who live in a residential park as their principal place of residence.

Discussion

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 holiday[32]. 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).

In other jurisdictions, some Acts only apply to agreements where the residential park dwelling is to be the person's principal place of residence[33]. 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).

[30] RPLT Act – section 5.
[31] Residential Parks (Long Stay Tenants) Bill 2005 – Second Reading Speech – 20 October 2005.
[32] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 31; *Residential Parks Act 2007* (SA) – section 5; *Residential Parks Act 1998* (NSW) – section 6; see also Residential Tenancies Act – section 5.
[33] *Residential Parks Act 2007* (SA) – section 5; *Residential Tenancies Act 1997* (Vic) - section 3 (definition of 'resident'); *Residential Parks Act 1998* (NSW) – section 5.

In their responses to the discussion paper both tenants and park owners recognise the need for short term leases in some circumstances and appeared to generally support change to address the loophole in the RPLT Act.

Proposed change

It is proposed that the RPLT Act be amended so that it applies from day one to all tenancies entered into for non-holiday purposes, subject to some exceptions.

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 residential site for holiday purposes;
- occupation of a residential site by an itinerant worker, unless parties agree otherwise;
- occupation in a residential park 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.

This proposal seeks to extend the statutory safeguards of the RPLT Act 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.

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 – in some jurisdictions, the tenant must sign a specified form acknowledging that they understand the short-term nature of the lease[34].

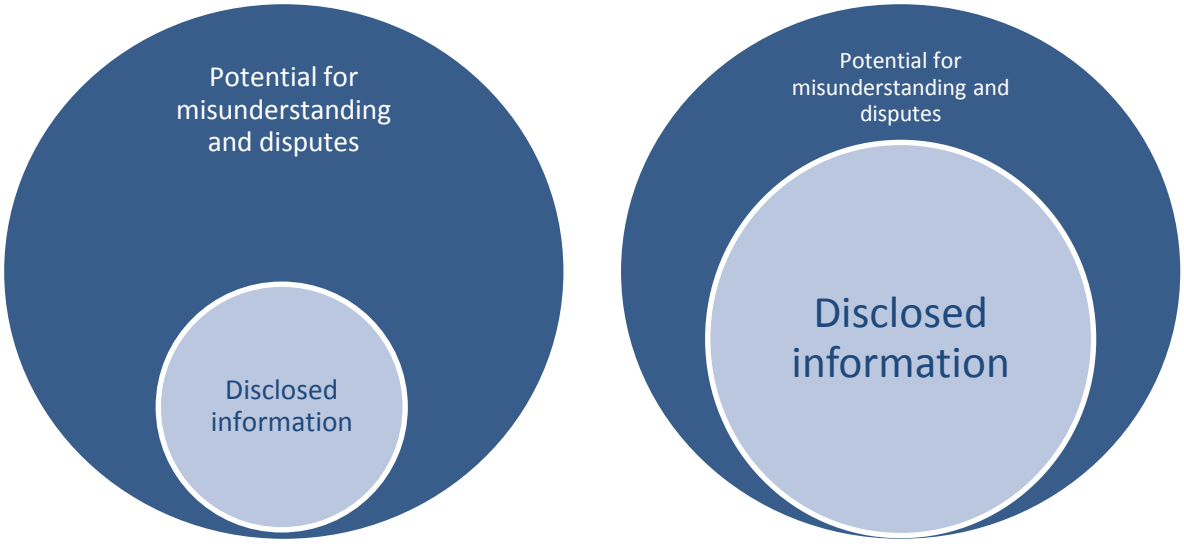
Issues for consideration	
Issue 8.4(a)	*Do you support the proposed changes? Why?*
Issue 8.4(b)	*What would be the cost implications of making the proposed changes?*
Issue 8.4(c)	*Should a determining factor in relation to the application of the RPLT Act be whether the dwelling is used as the person's principal place of residence?*
Issue 8.4(d)	*Are there any other types of arrangements that should also be excluded from the application of the Act? Are there arrangements any set out above that should not be excluded?*
Issue 8.4(d)	*Should the RPLT Act permit the parties to agree to an initial short term trial period? If so, how long should that period be?*

[34] *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) – section 47.

9 DISCLOSURE

It is essential 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 and depends on the type of agreement. Adequate disclosure is a key factor in ensuring that tenants actually do understand their rights and obligations under a long-stay agreement.

By improving transparency of information about a park and lease arrangement, including requirements for ongoing disclosure, tenants will be in a more informed position when making decisions about entering into a contract. A flow on benefit from greater transparency is reduced potential for disputes to arise at a later stage.



The Department is of the view that greater disclosure is justified, given that the legislation does not cover all the terms and conditions which may apply to long-stay agreements. It is therefore essential that all relevant information is disclosed in a clear manner to tenants prior to entry into an agreement.

9.1 WHAT INFORMATION SHOULD BE PROVIDED TO A TENANT?

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 agreement. [35]

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 Act[36].

If a new park operator takes on the operation of the park, the details of the new operator must be provided in writing to all long-stay tenants[37]. Any changes in details of the park operator must also be provided to tenants[38].

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.

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.

Discussion

Responses to the discussion paper indicate that both landlords and tenants are reasonably satisfied with the level of information that is required to be provided. However, a number of tenant respondents suggested that the following additional information should be provided:

- clearer information on how site fees are calculated and reviewed;
- clearer information on other charges payable;
- park rules that are easy to understand and information about how the rules may be changed (also see discussion at part 14 of this paper about park rules);

[35] RPLT Act - section 11.
[36] RPLT Act – section 15(1).
[37] RPLT Act – section 15(2).
[38] RPLT Act – section 15(3).

- details of facilities to be provided in the future and a schedule as to when work is to be carried out on those facilities;
- whether the park operator owns or leases the park and any relevant information about the owner's lease that could potentially impact on the tenant; and
- whether the park operator has any intentions to redevelop the park in the future and whether the park operator is aware of any potential changes to the land use for the park.

Some tenants and their representatives were of the view that lease agreements were too lengthy and complex and should be simplified.

In their responses to the discussion paper, park operators indicated that it is essential that tenants understand:

- the nature of their tenancy, in particular that the tenancy may have an end date and that they may be required to leave;
- the costs of occupancy and any review arrangements;
- the park rules; and
- the general requirements of and expectations in relation to park living.

Improved disclosure could assist tenants in understanding these factors.

Park operators also indicated that it is important that tenants disclose relevant information so that a park operator can assess whether a person is suitable for the particular park. For example, park operators have indicated that they require information as to whether a potential tenant is of good character, is physically and mentally fit and is able to meet the financial obligations under the lease agreement.

A number of the suggested disclosure items listed above are currently included in the disclosure material, mainly in the agreement itself, the information sheet or the information booklet. It may be necessary to consider whether the manner in which the information is presented can be improved in order to provide greater clarity.

The following areas, identified by tenant respondents to the discussion paper, do not appear to be covered by current disclosure requirements:

- details of proposed future development and improvement of facilities within the park, including proposed timeframes – concerns have been raised by tenants about representations made during negotiations about the provision additional facilities or services which have not been honoured;
- disclosure by the park owner or operator about any proposals they are aware of that may affect the continued operation of the park in the future, such as redevelopment or sale; and
- whether the park operator owns or leases the park, and any relevant information about the owner's leasing or financial arrangements (such as mortgages) that could potentially impact on the tenant's occupation.

In New South Wales, a park owner must give a prospective tenant written information which sets out answers to a range of questions about the park[39], including the following:

- Is the park owner aware of any arrangement or restriction on the use of the park by the owner or resident either now or in the future?
- Has any development application been made during the past five years under the *Environmental Planning and Assessment Act 1979* (NSW) for the redevelopment of the park or for a change in use of the land on which the park is situated?
- Have notices of termination been given to any residents in the past 12 months in connection with any proposed redevelopment of the park or any proposed change of use of the land on which the park is situated?

Proposed change

It is proposed that the RPLT Act and regulations be amended to strengthen and improve disclosure requirements. Disclosure documents will be revised and updated to ensure that the crucial 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 provision of the lease and some additional disclosures.

Summary of key provisions of the lease

It is proposed that a summary of the following important matters, together with references to relevant clauses in the lease agreement, be included in the disclosure statement:

Premises	• site details (such as the site number and location, size of the site) • details of shared facilities (if any) and any restrictions concerning access • details of services that are provided and whether utilities are separately metered • details of parking (including number of bays, location, any fees or rules)
Lease term	• the term of the lease and whether it is fixed-term or periodic
Costs	• rent and when and how the rent may be varied • details of fees and charges payable under the lease (including visitors fees) and how they may be varied
Tenants	• number of residents permitted to live at the premises, including children • whether pets are permitted and any rules or costs involved
Use of site	• details of any restrictions on the use of the site • details of any gardening or maintenance requirements for tenants in respect of the site • details of any insurance requirements for tenants

[39] *Residential Parks Act 1998* (NSW) – section 73

End of tenancy	• whether assignment and/or subletting is permitted and any conditions that apply • any restrictions or requirements in relation to the sale of a home on site • clear information as to the options available to the tenant at the end of the lease (for example, can the lease be renewed, will the tenant be required to relocate their home, is the park operator willing to purchase the home)
Other	• details of the park liaison committee (if any) • any special conditions applicable to the lease

Additional disclosures

The disclosure documents should also include the following additional matters:

- any key representations made during negotiations, that were relevant in a tenant's decision to enter into the agreement – this will give the tenant an opportunity to detail any representations that they relied on in entering into the agreement, for example, a promise to provide security services;
- details of proposed future development and improvement of facilities within the park, including proposed timeframes;
- disclosure by the park owner or operator about any proposals they are aware of that may affect the continued operation of the park in the future, such as redevelopment or sale (through use of questions similar to those used in New South Wales – see list above);
- whether the park operator owns or leases the park and any relevant information about the owner's lease that could potentially impact on the tenant's occupation;
- whether the park operator's financial arrangements could potentially impact on the tenant, for example is there a mortgage and will the mortgagee's consent to the tenant's lease be obtained? (see part 10.4 of this paper for discussion on the potential impact on tenants when a mortgagee enters into possession);
- 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[40];
- exit fee disclosure requirements – see discussion at part 16.5 of this paper; and
- date of manufacture of the home and an indication as to the useful life of the home (see part 18.3 for further discussion).

It is acknowledged that by increasing the disclosure requirements that a greater administrative burden will be placed on park operators. However, this burden is likely to be outweighed by the reduced potential for misunderstanding and disputes.

Issues for consideration	
Issue 9.1(a)	*Should any other matter be required to be disclosed by either party prior to entry into a lease agreement? Why?*
Issue 9.1(b)	*Should any matter be removed from the proposed list of disclosures? Why?*

[40] *Statutory Review of Retirement Villages Legislation: Final Report*, November 2010, Department of Commerce – recommendation 95, page 163.

Issues for consideration	
Issue 9.1(c)	*What would be the impact on park operators of making the additional disclosures listed above? Please identify any potential costs or difficulties that might arise.*

9.2 WHEN SHOULD DISCLOSURE DOCUMENTATION BE PROVIDED?

Issue

Currently, 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 person[41]. Consideration will be given to 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 before they sign the lease.

Discussion

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 signed[42];
- in New South Wales disclosure documents will be required to be provide 14 days before a contract is signed[43]; 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 agreement[44].

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 lease[45]; and
- recent amendments to the *Retirement Villages Act 1992* now require disclosure documents to be provided 10 working days before a person enters into a residence contract[46].

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

[41] RPLT Act – section 11.
[42] *Residential Tenancies Act 1997 (*Vic) – section 206I.
[43] *Residential (Land Lease) Communities Act 2013* (NSW) – section 21.
[44] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 33.
[45] Sections 6 and 6A.
[46] Section 13.

person is not entitled to rescind the agreement once they have entered into possession[47]. The cooling-off period therefore applies only in limited circumstances.

Option A – Status quo

No legislative change. Disclosure documents to be provided before long-stay agreement entered into, no timeframes are specified.

Option B – Amend the RPLT Act to include timeframes for provision of disclosure documents

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

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – status quo	• No additional administrative steps, gives the parties the freedom to enter into a contract when they wish.	• There is a risk that a 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 - require that disclosure documents be provided a minimum specified time before entry into the contract.	• Will ensure that the prospective tenant has adequate time in which to read and understand the agreement and accompanying documents and raise any queries with the park operator or seek independent advice. • Should reduce the potential for misunderstanding and disputes.	• An additional administrative step is included in the negotiation process, possibly leading to delays in finalisation of agreements.

Issues for consideration	
Issue 9.2(a)	*Should the RPLT Act set a timeframe for the provision of disclosure documents? Why?*
Issue 9.2(b)	*If a timeframe is specified, should it apply to all agreements or just site-only agreements?*
Issue 9.2(c)	*If a timeframe is specified, what would be a suitable period – for example, five business days? Why?*

[47] RPLT Act – section 18.

Issues for consideration	
Issue 9.2(d)	*What would be the likely impact on park operators and/or tenants of setting a timeframe for provision of disclosure documents? Please outline benefits, or potential costs or difficulties that might arise.*
Issue 9.2(e)	*Are there circumstances where any timeframes that apply should be able to be waived? If so, what are these?*

9.3 SHOULD ONGOING DISCLOSURE BE REQUIRED?

Issue

In some instances, after a lease agreement has been entered into, a park operator may become aware of a change in circumstances that could impact on a tenant's occupation. This would be of particular significance in relation to tenancies of a long duration. Changed circumstances might also arise at the time of a lease renewal. This raises the question as to whether the park operator should be required to inform a tenant about these changes?

Objective

To provide for greater transparency in relation to residential parks agreements and ensure that tenants are provided with information relevant to the security of their ongoing tenancy.

Discussion

In New South Wales park owners are obligated to inform residents of any proposed arrangements or restrictions, of which the park owner becomes aware during a lease, that are 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[48]. This ensures tenants are made aware of any changes that could impact on their occupation of a site in a park.

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 during a tenancy similar to those in the New South Wales Act. 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.

[48] *Residential Parks Act 1998* (NSW) – section 74.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – status quo	• Does not place additional administrative burden on park operators.	• 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	• 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.	• Increased administrative burden on park operators.

Issues for consideration	
Issue 9.3(a)	*Do you support the introduction of an ongoing disclosure obligation? Please give reasons for your answer.*
Issue 9.3(b)	*What matters should the park owner be required to disclose under ongoing disclosure obligations?*
Issue 9.3(b)	*Should updated disclosure documents be provided upon a renewal or extension of a lease?*

9.4 CONSEQUENCES OF INADEQUATE DISCLOSURE

Issue

There is clearly potential for a tenant to be misled and suffer loss or damage if a park operator fails to provide the relevant disclosure documents or provides information that is incorrect or misleading.

Objective

The RPLT Act needs to include appropriate remedies to address those circumstances where disclosure is inadequate.

Discussion

Currently, under the RPLT Act and 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) [49]; and

[49] RPLT Act – section 11.

- 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)[50].

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 requirements[51]. The SAT also has the power to make any other orders it considers to be appropriate[52].

Proposed changes

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 visitor's fees[53];
- 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[54]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 term[55].

These remedies would provide meaningful resolution to problems arising for tenants as a result of inadequate disclosure. The powers of the SAT are discussed further at part 20.2 of this paper.

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.

Issues for consideration	
Issue 9.4(a)	*What would be the likely impact on park operators and/or tenants of making any of the changes set out above? Please outline potential benefits, costs or difficulties that might arise.*
Issue 9.4(b)	*Can you think of any other mechanisms for addressing issues arising out of a failure of the park operators to properly disclose relevant information?*

[50] RPLT Regulations – regulation 9.
[51] RPLT Act – section 62(4)(e).
[52] RPLT Act – section 62(4)(k).
[53] 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.
[54] See *Commercial Tenancy Act 1995* – section 26(1a).
[55] See *Retirement Villages Act 1992* – section 13(4).

10 FACTORS AFFECTING SECURITY OF TENURE

Security of tenure can be described as 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.

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.

Tenure issues are also important to park operators as they can impact on a park operator's capacity to exercise their property rights. Adverse impacts on property rights could make residential parks less attractive as an investment and result in a reduction in the number of residential parks.

The RPLT Act provides some protections in relation to security of tenure by regulating the manner in which different tenancy types may be terminated, including requirements about notice and compensation.

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 does not actually provide for this. Some believe that this expectation should be reflected in a fixed-term lease of extended duration. Tenant responses to the discussion paper show that this issue is of particular significance to home owners, given the difficulties and costs that may arise in relocating a dwelling.

Objective

To ensure that the tenants' security of tenure is adequately protected, while ensuring that park operators are not subject to unnecessary restrictions in relation to the types of tenancies that they are able to offer.

Discussion

In response to the discussion paper, some tenant representatives have requested that residential park leases be 'open-ended', whereby they could not be terminated except by the mutual agreement of the parties or by an order of the SAT. This model has been in place in Queensland since 2004 (for home owners of park homes) where the legislation provides that a home owner's right under a site agreement continues until the agreement is terminated[56]. The Act then sets out relatively limited circumstances in which a lease can be terminated, including by agreement between the park owner and home owner, by the home owner giving notice or by order of the tribunal[57]. The tribunal may make a termination order if a home owner has breached the agreement, engaged in inappropriate behaviour (such as assault, property damage or interference

[56] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 26.
[57] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – Part 6.

with quiet enjoyment) or used the premises other than as a residence or where the park owner genuinely wishes to use the park land for another purpose[58].

In their responses to the discussion paper, other tenant representatives have requested that a mandatory minimum fixed-term be prescribed, for example 5 years. This model has recently been introduced in Victoria for new Part 4A Parks[59] and a similar requirement has been included in the New South Wales Act[60], under both pieces of legislation the requirement only applies to site agreements with home owners of park homes.

Park operators and their representatives have expressed concern about:

- the potential limits to flexibility in terms of the types of tenancies they would be able to offer if minimum terms were mandated in the RPLT Act;
- difficulties they might face in offering minimum lease periods due to external constraints (for example, licences issued under the CPCG Act are 12 months in duration); and
- potential impacts in relation to future plans or developments for a park.

This issue does not generally impact on operators of lifestyle villages, who already offer long-term leases, but is likely to impact on operators of park home parks and mixed-use parks. Responses to the discussion paper indicate that several operators consider that the imposition of minimum terms would be a disincentive to the creation of or continuation of long-term sites.

The Department is of the view that mandating a minimum fixed lease period would not be workable in Western Australia. A number of park operators are likely to have difficulties meeting an obligation to provide the minimum fixed-term due to external constraints, such as licensing requirements under the CPCG Act or their own head lease arrangements. In addition, mandating minimum terms would have a significant impact on the ability of operators of mixed-use parks to adapt their tenancy mix to suit market needs. Also, a five year term may not suit all tenants. Fixed-term leases also have the disadvantage in that the lease can be terminated at the end of the set term on relatively short notice.

In its 2009 Report, EISC noted as follows:

> *The Committee has taken extremely seriously the above concerns expressed by caravan park residents. However, it also recognises that the introduction of legislative change along the lines of that advocated by long-stay residents and PHOA (that is, five year fixed term agreements and/or relocation compensation) may have the effect of any, or all, of the following:*
>
> - *forcing more caravan park closures due to increasing costs, particularly in the short term in order to get in before any such legislative amendment takes effect*

[58] *Manufactured Homes (Residential Parks) Act 2003* (Qld)– section 38.
[59] *Residential Tenancies Act 1997* (Vic) – section 206H – minimum 5 year term – Part 4A Parks are parks with site agreements with home owners of moveable dwellings – requirement applies to Part 4A parks registered after 1 September 2011.
[60] *Residential (Land Lease) Communities Act 2013* (NSW) – section 31 – if a fixed term is specified in the agreement it must exceed 3 years. If the agreement specifies a period of 3 years or less, the provision is of no effect and the agreement is unlimited as to its duration.

- *the removal of existing long-stay residents from caravan parks by operators if the income provided is not seen as adequate to cover the increased administrative and financial burden*
- *an increased reluctance by caravan park operators to take any new long-stay tenants into their park.*

These very real possibilities mean that legislative change in the manner advocated by residents and PHOA to existing provisions around long-stay agreements could possibly harm, rather than help, many caravan park residents in the long term.

Mandating minimum lease periods is therefore not considered a viable option without evidence of a clear need for this level of intervention in the market.

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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A **– no change**	• Park operators can continue to comply with their own lease arrangements and/or annual licensing requirements without risk of inconsistency between these and their lease arrangements with tenants. • Continued flexibility for parties to negotiate an agreed term.	• Home owners not provided with security of tenure. • Those home owners who want a fixed-term lease may continue to only be offered periodic leases.

	Potential benefits	Potential disadvantages
Option B - **No mandatory minimum fixed-term, but strengthen disclosure, notice and compensation provisions for termination during a specified initial tenancy period**	• Promotes the offering of longer term leases. • Allows operators the flexibility to also offer shorter term tenancies.	• Could make parks a less attractive investment option by limiting flexibility. • May act as a disincentive for mixed-use parks to offer any long term tenancies (i.e. parks might only offer holiday stays). • May result in increased rents for shorter term leases in order to allow park operators to cover potential compensation costs.

Issues for consideration	
Issue 10.1(a)	*Which option do you prefer? Why?*
Issue 10.1(b)	*Can you think of other ways to address this issue (including a combination of elements from the options outlined above)?*
Issue 10.1(c)	*What would be the cost implications of the different options, particularly for park operators? Please provide quantifiable information if possible.*
Issue 10.1(d)	*Option B – is compensation and longer notice periods an adequate trade-off for lower security of tenure for home owners?*

10.2 TERMINATION OF TENANCY 'WITHOUT GROUNDS'

There are a variety of circumstances contemplated by the RPLT Act in which a tenancy may be terminated early by either of the parties, one of the most contentious being termination 'without grounds'.

The RPLT Act provides that a tenant may give a notice of termination to the park operator to terminate a periodic long-stay agreement 'without grounds'. The notice of termination by the tenant must be given at least 21 before they vacate. Tenants on fixed-term agreements cannot end the agreement before the end of the term.

The RPLT Act also provides that a park operator may give a notice of termination to a long-stay tenant to terminate the long-stay agreement 'without grounds'. The notice of termination must not require vacant possession before 60 days have passed for renters 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.

Issue

The discussion paper raised the issue as to 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.

Discussion

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 some other jurisdictions, 'without grounds' termination is not permitted in relation to any agreements with home owners[61], including periodic agreements. In these jurisdictions a range of specific grounds for termination are included in the legislation. In other jurisdictions, the legislation does permit 'without grounds' termination of periodic agreements, but provides for a longer notice period. For example, in Victoria, the operator of a Part 4A Park must give 365 days' notice of termination[62]to a home owner.

Tenant responses to the discussion paper indicated that the right to terminate a tenancy 'without grounds' is one of the most opposed provisions of the current legislation. Many tenants expect to live in a park for their lifetime, and have indicated that they will find it difficult to find another park in which to relocate or to move the home due to its condition. It may also be costly for those tenants who must either move their dwelling off-site or sell their dwelling.

Feedback to the discussion paper indicates that for park operators, the ability to terminate a particular tenancy 'without grounds' provides the required flexibility in order for them to manage their investment, respond to changing market conditions, and realise a return on their investment on terms that are acceptable to them.

This issue is seen as impacting mainly on mixed-use parks where there is often a combination of periodic and fixed-term tenancies, as well as a mixture of holiday stay and long-stay tenants. The issue will also be relevant to park home parks where periodic tenancies may be offered. In lifestyle villages, where home owners are generally offered fixed-term leases of significant duration, 'without grounds' termination is not regarded as such a contentious issue.

[61] *Residential Parks Act 1998* (NSW) and *Manufactured Homes (Residential Parks) Act 2003* (Qld).
[62] *Residential Tenancies Act 1997* (Vic) – section 317G.

Option A – No change

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, whilst 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 ground could encompass 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 - 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 site or another community close-by which the operator runs) and new agreement to be entered into on same or substantially similar terms; or
- non-use of the site 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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**	• 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.	• Home owners on periodic leases not provided with security of tenure. • Home owners on periodic leases might not find anywhere to relocate to.
Option B – **remove 'without grounds' termination**	• Will provide greater security of tenure to home owners in mixed-use parks on periodic agreements. • May result in fixed-term tenancies being offered to those home owners in mixed-use parks who were only offered periodic tenancies previously. • Operators have more certainty as to the length of stay of home owners.	• 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).
Option C- **remove 'without grounds' termination, but include additional grounds upon which the tenancy can be terminated**	• Retains flexibility for specified purposes. • Reduces possibility that power of termination could be used capriciously or arbitrarily. • Provides greater security of tenure.	• 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.

Issues for consideration	
Issue 10.2(a)	*Which option do you prefer? Why?*
Issue 10.2(b)	*Can you think of other ways to address this issue (including a combination of elements from the options outlined above)?*
Issue 10.2(c)	*What would be the cost implications of the different options, particularly for park operators of mixed-use parks? Please provide quantifiable information if possible.*
Issue 10.2(d)	*If option C were implemented:* • *what grounds for termination should be included?* • *what would be a sufficient notice period for each ground?* • *which, if any, grounds should give rise to a right to compensation?*
Issue 10.2(e)	*What should be an appropriate notice period for termination by a tenant of a periodic tenancy 'without grounds'?*

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

In recognition of an owner's right to sell their park, the RPLT Act provides that a park operator may give a notice of termination to a long-stay tenant on the grounds that the park operator has entered into a contract for the sale of park premises and is required under the contract to give vacant possession[63].

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 owners[64]. Compensation is payable for termination of a fixed term lease before the end of the term[65].

Issue

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

Objectives

To ensure that tenants' security of tenure is adequately protected, while not impacting on the marketability and/or desirability of residential park investment.

Discussion

In response to the discussion paper, a number of tenants and their representatives expressed the view that leases should continue upon sale of a park, with the purchaser being required to honour the previous park operator's obligations. Some respondents stated that termination on sale would only be acceptable with adequate notice and compensation.

Park operators expressed concern that such 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 jurisdictions provide for the park owner to terminate a periodic tenancy on grounds that the park owner has entered into a sale agreement with vacant possession required, although the notice periods are different. This right to terminate generally does not apply in relation to fixed term leases.

[63] RPLT Act – section 41(1).
[64] RPLT Act – section 41(3).
[65] RPLT Act – section 46.

Some legislation (applicable to site agreements with home owners) is more restrictive when a park owner wants to sell. For example, the Queensland Manufactured Homes Act provides that a successor in title (including a purchaser of the park) obtains the benefits and is subject to the obligations of the park owner in relation to a site agreement[66].

The Residential Tenancies Act provides that a landlord may terminate a periodic tenancy on the ground that the landlord has entered into a contract for sale with vacant possession and must give a minimum of 30 days notice. The landlord cannot terminate a fixed term tenancy on this ground during the currency of the fixed term[67].

Proposed change

It is proposed that the RPLT Act be amended to provide that a park operator is no longer permitted to terminate a fixed term agreement on the sale of a park. This would provide tenants on fixed term tenancies with greater security of tenure, as their right to occupation will not be overridden by changes in park ownership.

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.

This proposal is consistent with the approach taken in most other jurisdictions and in relation to residential tenancies in Western Australia and recognises the nature of a fixed term arrangement. This is particularly important for home owners.

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

Impact analysis

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

	Potential benefits	Potential disadvantages
Status quo	• 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.	• Home owners not provided with security of tenure. • Home owners might not find anywhere to relocate to.

[66] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 27.
[67] Residential Tenancies Act – section 63.

	Potential benefits	Potential disadvantages
Proposed change – remove ability for operator to terminate leases when park is sold	• Provides tenants with greater security of tenure as right of occupation not overridden by changes in park ownership. • Ensures the continued operation of the residential park following sale. • The new owner has certainty with regards to tenancy arrangements.	• Will prevent park owners 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 lifestyle village or park home park may be increased to compensate for the reduced flexibility on sale of the park.

Issues for consideration	
Issue 10.3(a)	*What would be the cost implications of implementing this proposal, particularly for park operators? Please provide quantifiable information if possible.*
Issue 10.3(b)	*Are there any further safeguards that should be included?*
Issue 10.3(c)	*Are the proposed notice periods for termination of periodic leases appropriate?*
Issue 10.3(d)	*Should this proposal apply in relation to all fixed term agreements or just to certain groups, for example, home owners or those in lifestyle villages?*

10.4 IMPACT OF PARK OWNER INSOLVENCY – MORTGAGEE POSSESSION

It is recognised that tenants' financial interests and their tenure would be at risk if a park owner becomes insolvent. The fear of eviction in the event of insolvency has understandably been identified as a key concern for park tenants.

In relation to the debts of a park owner, in the majority of cases there is likely to be a secured mortgage over the land.

The RPLT Act currently provides that a long-stay agreement ends when a mortgagee takes possession of the premises under the mortgage[68]. 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 SAT[69].

[68] Section 33(3)(c).
[69] Section 54.

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 application[70].

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 lease[71].

Compensation is not payable under the RPLT Act for termination of an agreement as a result of a mortgagee entering into possession[72].

Issue

Whether tenancies under the RPLT Act should terminate when a mortgagee enters into possession.

Objective

To ensure that tenants' security of tenure is adequately protected, while recognising the rights of mortgagees in dealing with mortgaged property.

Discussion

Tenants have raised concerns about early termination of tenancy agreements and eviction from residential parks in those instances where a mortgagee (i.e. a bank or other financial institution) enters into possession of park premises.

Submissions to the discussion paper indicate that a number of respondents are of the view that the current provisions of the RPLT Act are not adequate to protect the interests of tenants.

This issue is of particular concern to home owners who may be required to vacate a site at short notice and with no compensation to cover relocation costs. A number of tenant respondents to the discussion paper were of the view that lease agreements should be upheld, particularly if a mortgagee has previously consented to the lease.

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. Concerns have been raised in response to the discussion paper by park operators that financiers may be reluctant to provide finance to park owners if the legislative requirements become too onerous.

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 premises [73] and at least 30 days' notice to vacate the premises before taking possession of the property[74].

[70] Section 70(1).
[71] Section 70(2).
[72] 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.
[73] *Residential Tenancies Act 1987* – section 81B.
[74] *Residential Tenancies Act 1987* - section 81A.

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 Act[75]. However, it should be noted that retirement village residents generally pay significantly higher costs than residential park tenants and are not able to relocate their homes.

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 SA Act provides that a tenancy agreement terminates if a mortgagee takes possession[76].

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.[77]

For home owners of 'Part 4A dwellings'[78] (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.[79]

The Queensland Manufactured Homes Act[80] and the New South Wales Act[81] 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.

[75] *Retirement Villages Act 1992* – section 17.
[76] *Residential Parks Act 2007* (SA) – section 52(d).
[77] *Residential Tenancies Act 1997* (Vic) – section 316.
[78] *Residential Tenancies Act 1997* (Vic) – see section 3 for definition of part 4A dwelling.
[79] *Residential Tenancies Act 1997* (Vic) – section 317ZI.
[80] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 27.
[81] *Residential (Land Lease) Communities Act 2013* (NSW) – Section 4.

Option A – No legislative change

If the current arrangements continue, a tenancy agreement ends 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. This option provides a higher level of protection for tenants, but would significantly reduce flexibility for mortgagees, who would only be able to terminate leases in accordance with the other termination provisions 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 – No legislative change	• Affords mortgagee with flexibility to deal with the mortgaged property as appropriate.	• 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	• Tenants' interests afforded greater protection. No risk of early termination due to mortgagee possession.	• 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.

Issues for consideration	
Issue 10.4(a)	*Which option do you prefer? Why?*
Issue 10.4(b)	*What potential costs could be associated with each option? Please provide quantifiable information if possible.*

Issues for consideration	
Issue 10.4(c)	*Should the same principles apply to renters and home owners? If not, how should each group be treated?*
Issue 10.4(d)	*Should this proposal apply in relation to all parks or just lifestyle villages?*

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.

Objective

To provide for recognition of persons as tenants in appropriate circumstances.

Discussion

While the RPLT Act does not have specific provisions, recent amendments to the Residential Tenancies Act 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 court 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[82]. Other jurisdictions also have similar provisions[83], the legislation in Queensland specifically provides that the tribunal may not make an order without giving the lessor the opportunity to be heard[84].

In responses to the discussion paper a number of tenants supported the introduction of a mechanism at law whereby a person in occupation (who is not named on in the lease document) could be recognised. 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.

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.

[82] *Residential Tenancies Act 1987* (WA) – section 59C.
[83] *Residential Parks Act 1998* (NSW) – section 43; *Residential Tenancies and Rooming Accommodation Act 2008* – section 243.
[84] *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) – section 243(7).

Proposed change

It is proposed that similar provisions to those in the Residential Tenancies Act be included in the RPLT Act. This would provide a mechanism for recognition of persons as tenants, with the decision being made by an independent body (the SAT). Given the communal aspects of park living, it would be appropriate for a park operator to be given an opportunity to be heard in relation to such applications. It would also be open to the park operator and the occupier to agree to the terms of a lease without the intervention of the SAT.

Issues for consideration	
Issue 10.5(a)	*What would be the implications of including a provision allowing for recognition of persons as tenants in the RPLT Act?*
Issue 10.5(b)	*Should the provision specifically provide that the park operator must be given an opportunity to be heard by the SAT?*

11 COMPENSATION

The RPLT Act sets out a number of specific termination of tenancy 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 Act[85];
- if the parties cannot agree on the amount of compensation payable, the amount will be determined by the SAT[86]; 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 abandonment[87].

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 expires without renewal.

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 a park to relocate to. It should be noted that tenants have indicated that they would prefer to remain in a park to payment of compensation, but it is acknowledged that in some instances security of tenure is not possible (particularly in relation to park closures).

Compensation for relocation of a home within a park is addressed through use of prescribed clauses in long-stay agreements.

As compensation is directly linked to termination of tenancy, it is important to consider compensation alongside the security of tenure issues outlined in part 10 of this paper.

11.1 DETERMINING COMPENSATION – FIXED TERM TENANCIES

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 SAT[88].

[85] RPLT Act – section 46(1).
[86] RPLT Act – section 46(2).
[87] RPLT Act – section 47.

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)[89].

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 agreement[90].

Issue

The discussion paper asked whether additional factors should be taken into account in determining compensation, including:

- whether a tenant has made improvements to the site, with the consent of the park operator;
- where a tenant has been in occupation of the site for a long time;
- where the tenant cannot locate an alternative site; and
- where the tenant's dwelling is incapable of being moved.

Objectives

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

Discussion

In responses to the discussion paper, tenants and their representatives were of the view that improvements made in relation to a site and the length of time a tenant has been in occupation should be taken into account. Some park operators viewed these factors as reasonable, however a number of park operators did not support the inclusion of additional factors.

[88] RPLT Act – section 46(2).
[89] RPLT Act – section 65(2) and RPLT Regulations – regulation 16.
[90] RPLT Act – section 65(3).

Park operators appear to be strongly opposed to any additional compensation being payable if a relocatable home is unable to be moved, particularly given that the CPCG Regulations specifically require that a home owner and the licensee (park operator) is to ensure that the relocatable home is maintained in such a condition that it is able to be moved[91].

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 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 circumstances[92].

Option A – No legislative change

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 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 agreement[93].

[91] Caravan Parks and Camping Grounds Regulations 1997 - regulation 15 and regulation 19.
[92] *Residential (Land Lease) Communities Act 2013* (NSW) – section 141.
[93] RPLT Act – section 65(3)(b).

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – No legislative change	• Park operator liable only for actual relocation costs.	• Limits the compensation payable to tenants in some instances, 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	• Increases the range of specific factors that can be taken into account in determining compensation.	• 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.
Option C – include broad general power in relation to determination of compensation	• Increases the SAT powers 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. • Improved consistency in the determination of compensation for renters and home owners.	• 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.

Issues for consideration	
Issue 11.1(a)	*Which option do you prefer? Why?*
Issue 11.1(b)	*Can you think of other ways to address this issue?*
Issue 11.1(c)	*What would be the cost implications of the different options? Please provide quantifiable information if possible.*

11.2 COMPENSATION ON TERMINATION OF A PERIODIC TENANCY

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. 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.

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)[94], without any requirement to pay compensation to the park operator.

The discussion paper asked whether respondents supported the payment of compensation on the termination of a periodic tenancy and what factors should be taken into account[95].

Objective

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

Discussion

In response to the discussion paper, tenants generally supported the application of compensation provisions to all tenancies, including periodic tenancies.

Park operators indicated that they oppose the expansion of compensation provisions to periodic tenancies. They were of the view that it is not reasonable to require them 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.

Park operators stated 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 or park closures.

[94] RPLT Act – section 44.
[95] Discussion paper – page 22.

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 operator[96], for required repairs or upgrading[97], for change of use[98], on closure or compulsory acquisition of a park[99] or if the agreement is frustrated[100].

Option A – No legislative change

Under the current provisions of the RPLT Act compensation is not payable for relocation costs on termination of a periodic tenancy. Compensation is payable for termination of a fixed-term agreement.

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.

In the event that one of the above circumstances occurs, this option would impose a significant cost burden on park operators and does not recognise the nature of periodic agreements. Accordingly, option B is unlikely to be considered a viable option without evidence of a clear need for this level of intervention in the market.

[96] *Residential Parks Act 1998* (NSW) – sections 118 and 128; *Residential Parks Act 2007* (SA) - section 81; *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) – section 350.
[97] *Residential Parks Act 1998* (NSW) – sections 101 and 128; *Residential (Land Lease) Communities Act 2013* (NSW) – sections 123,139 and 140.
[98] *Residential Parks Act 1998* (NSW) – sections 102 and 128; *Residential (Land Lease) Communities Act 2013* (NSW) – section 125.
[99] *Residential (Land Lease) Communities Act 2013* (NSW) – sections 124 and 126.
[100] *Residential Parks Act 1998* (NSW) – sections 104 and 128.

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

This option acknowledges the true nature of periodic agreements – that is, they provide a right to occupy a site on the park for an unspecified duration, but with the ability for either party to terminate at relatively short notice. However, where periodic agreements continue for longer than a stated minimum period (for example, five years), under this option home owners would then be entitled to further protections, as such arrangements become more like fixed-term agreements.

Under this option where a periodic agreement exceeds the specified period, 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.

Other considerations

If the rights to compensation for home owners are expanded, it may also be necessary to consider strengthening the rights of park operators. While the options set out above do not contemplate a general compensation component payable to park operators where a home owner terminates a periodic lease, it may be appropriate to increase the notice period from 21 days to 60 days. It may also be appropriate to provide the operator with a right to seek compensation for site restoration where a home owner vacates the site, but leaves it damaged or in disrepair.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – No legislative change	• 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.	• 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 earlier than expected.

	Potential benefits	Potential disadvantages
Option B – Home owners on periodic leases to have same right to compensation as those on fixed-term leases	• Extends compensation provisions to home owners on periodic tenancies. • May result in fixed-term tenancies being offered to those home owners in mixed-use or park home parks who were otherwise only offered periodic tenancies.	• 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. • 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 or park home 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	• Time period qualification will ensure that 'true' periodic agreements, where duration of lease is shorter can continue unchanged. • Increases certainty for home owners on periodic leases who have been living in a mixed-use or park home park for an extended period of time. These home owners 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.	• Time period qualification could result in operators terminating periodic lease agreements within the 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.

Issues for consideration	
Issue 11.2(a)	*Which option do you prefer? Why?*
Issue 11.2(b)	*Can you think of other ways to address this issue?*
Issue 11.2(c)	*What would be the cost implications of the different options? Please provide quantifiable information if possible.*

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 have no certainty with regards to the extension of their lease at the end of the term and will have sole responsibility for relocation costs.

Objective

To determine appropriate circumstances for payment of compensation to tenants for relocation costs.

Discussion

Similar issues arise in relation to compensation payable at the end of a fixed-term lease as with compensation payable for termination of periodic tenancies. Tenants support the payment of compensation as significant costs can be involved in relocation. Park operators are 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.

Legislation in other jurisdictions does not provide for payment of compensation at the end of a fixed-term lease.

Option A – No legislative change

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.

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 unlikely to be considered a viable option without evidence of a clear need for this level of intervention in the market.

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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – No legislative change	• Operators have continued flexibility to adapt to market conditions without added financial burden. • Operators will 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.	• Home owners on fixed-term leases will have no option to extend a lease beyond the fixed term and no right to compensation for relocation costs.
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	• Provides incentive for operators to offer extensions or renewals of leases at the expiry of a fixed term. • Home owners on fixed-term leases may find it easier to pay for costs of relocation.	• Providing compensation at the end of a fixed term fails to recognise the nature of the tenancy i.e. that there is no site permanency and the agreement expires at the end of the agreed term. • Operators may find it more costly to operate park and may seek to recover these costs through increased rent. • Parks may no longer be financially viable, could result in the closure of parks.
Option C – park operator to provide notice to the home owner about the park operators intentions at the expiry of the lease term	• Will allow a home owner adequate time to plan for relocation. • Does not impose an additional cost burden on park operators.	• Does not provide assistance to home owners with regards to costs of relocation.

Preliminary assessment

The Department's preliminary assessment is that if there is to be change, that option C would be the most appropriate option.

Issues for consideration	
Issue 11.3(a)	*Which option do you prefer? Why?*
Issue 11.3(b)	*Can you think of other ways to address this issue?*
Issue 11.3(c)	*What would be the cost implications of the different options? Please provide quantifiable information if possible.*

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.

Objective

To provide a clear right to payment of compensation for tenants in relation to costs of relocation within a park.

Discussion

The RPLT Act provides that long-stay agreements must be in writing and contain certain prescribed clauses[101]. The RPLT Regulations provides 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 home[102].

Any disputes in relation to payment of compensation for repositioning a relocatable home would be dealt with by the SAT as a dispute arising under the long-stay agreement.

Legislation in Queensland and New South Wales specifically provides for the park operator to pay the costs of relocation of a site tenant within a park[103].

Option A – No legislative change – right to relocation costs included in agreement

Under this option there would be no change. The parties would continue to rely on the lease agreement to address the right to compensation for relocation within a park.

[101] RPLT Act – section 10.
[102] RPLT Regulations – regulations 4-7, schedules 1 - 4.
[103] *Residential Parks Act 1998* (NSW) - section 127; *Residential (Land Lease) Communities Act 2013* (NSW) – sections 135 and 136; *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) – s.226; *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 93.

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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – No legislative change – right to relocation costs included in agreement	• Issue addressed in the agreement itself, parties likely to look to the agreement in determining their rights.	• Parties may be unaware of the contractual requirement to pay relocation costs. • 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	• Rights to compensation would be clearly set out in the legislation. • Clear dispute resolution mechanism would be provided, by reference to the SAT. • Consistent with other compensation provisions. • Reduces the likelihood of disputes.	

Issues for consideration	
Issue 11.4(a)	*Which option do you prefer? Why?*
Issue 11.4(b)	*Can you think of other ways to address this issue?*
Issue 11.4(c)	*What would be the cost implications of the different options? Please provide quantifiable information if possible.*

12 DEATH OF A TENANT – LIABILITY OF TENANT'S ESTATE

Issue

An issue identified in the discussion paper concerns the potential liability of a sole tenant's estate for the unexpired term of the lease when the tenant dies. The RPLT Act does not directly address this issue.

Objective

To provide for an appropriate balance between the rights and obligations of the park operator and those of a tenant's estate following the death of a tenant.

Discussion

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.[104] Other legislation provides that a 'home owner' includes any personal representative or beneficiaries,[105]who would take on the lease and therefore receive the benefits and assume the obligations of home owner after their death.

Some tenant respondents to the discussion paper were of the view that liability under a lease should cease on the death of a sole tenant or upon finalisation of the estate.

However, the majority of responses in relation to this issue (both tenant and operator) acknowledged that payment of rent from a deceased person's estate would need to continue following the death of the tenant. Park operators and their representatives were of the view that these payments should continue until the home is either sold or removed, so that the park operator does not suffer any financial loss. An alternative view was expressed by a number of home owners and their representatives, who were of the view that the liability to pay rent should be limited to a specified time period, so as to provide the park operator with an incentive to sell homes quickly. Other respondents suggested that this matter should be left to negotiation and agreement between the parties.

The *Retirement Villages Act 1987* has recently been amended to provide for the sharing of costs between the village operator and a resident's estate, by providing that recurrent charges (including rent) are payable by the deceased resident's estate only for a limited period[106]. It is proposed that in most cases this period will be either three months or six months from the later of permanent vacation or the grant of probate, depending on when a contract was entered into[107].

[104] *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) – section 277; *Residential Tenancies Act 1997* (Vic) – section 228, *Residential Tenancies Act 1987* – section 60.
[105] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 8, *Residential (Land Lease) Communities Act 2013* (NSW) – section 4.
[106] *Retirement Villages Act 1992* – new section 23.
[107] It should be noted that in some circumstance liability might cease at an earlier date, if the contract provides for that, or if a premium is repaid in whole or part or as a consequence of an order made by the SAT.

12.1 RENTERS

This issue is of more significance in relation to site agreements with home owners, as the dwelling needs to be sold or removed before a park operator is able to re-let the site, whereas it is a simpler process to terminate a tenancy agreement with a renter and re-let the premises.

Proposed change

It is proposed that on the death of a renter who is a sole tenant the tenancy agreement terminates. This is consistent with the Residential Tenancies Act.

Issues for consideration

Issue 12.1 *Should a tenancy agreement with a renter terminate on the death of the renter? If no, why?*

12.2 HOME OWNERS

For site agreements with home owners, as the estate of the home owner will need to sell or remove the home, automatic termination 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.

Options

Responsibility for payment of ongoing rent and other reasonable expenses could be dealt with in the following ways:

- the estate of the deceased home owner is liable to pay until the dwelling is either sold or removed; or
- the estate of the deceased person is liable to pay for a limited period, for example 6 months from the grant of probate.

Issues for consideration

Issue 12.2 *Following the death of a home owner, for how long should the estate of the home owner be liable to pay the rent and other costs under the lease?*

- *until the home is sold or removed;*
- *for a specified time period only – please specify an appropriate period; or*
- *other – please specify.*

13 TERMINATION OF TENANCY FOR DAMAGE TO PROPERTY AND VIOLENT BEHAVIOUR

As park tenancies involve communal living, a tenant who causes or threatens to cause damage to property or harm to others has a disruptive influence on those residing or working at the park.

In relation to property, the RPLT Act generally requires that tenants (both home owners and renters)[108] must not intentionally or negligently cause or permit damage to rented or shared premises[109]. In terms of conduct, tenants (or their guests) must not ordinarily cause or permit a nuisance anywhere in the park[110]. The Act also requires the park operator (amongst other things) take all reasonable steps to ensure other tenants (or their guests) do not interfere with a tenant's right to reasonable peace, comfort or privacy of agreed premises[111]. A park operator can issue a default notice for breach of the agreement, setting out the concern (for example, noise or nuisance) and providing the tenant with 14 days to remedy the situation. If the situation is not remedied, a park operator can issue a 7-day termination notice and, if required, apply for a possession order at the State Administrative Tribunal.

However, if the matter requires more immediate consideration, a park operator can apply for a hearing at the State Administrative Tribunal and seek an immediate order for possession of the agreed premises (without issuing a notice) if a tenant has intentionally or recklessly caused or permitted (or is likely to cause or permit):

- serious damage to park premises; or
- injury to the park operator, an operator's agent or any other person lawfully on park premises[112].

Issue

Whether additional measures should be included in the RPLT Act to enable park operators to effectively deal with damage to property and violent behaviour by tenants.

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.

[108] Reference to tenant includes his/her guests, for whom a tenant is vicariously responsible under the RPLT Act – schedule 1, clause 17.
[109] RPLT Act - section 32, schedule 1, clauses 6 and 17.
[110] RPLT Act - section 32, schedule 1, clauses 10 and 17.
[111] RPLT Act - section 32 - schedule 1, clauses 11 and 17.
[112] RPLT Act - section 71.

Discussion

Park operators, including those in regional areas and in mixed-use parks, have indicated they need access to measures that will allow them to deal with matters involving damage or violent behaviour in a timely and effective manner.

The issue is complicated because the matter of violence and damage moves beyond a civil dispute, either between an operator and a tenant or between tenants, and involves the threat of, or actual, criminal behaviour.

In dealing with the issue as a criminal matter, park operators can contact police in an emergency or for general assistance, depending on the park operator's assessment of the urgency of the response required. Upon responding, police can assess the situation and discuss possible options for dealing with the matter with the park operator, but police have no power to evict a tenant.

Park operators who have had experience in using the current tenancy laws to deal with such a matter indicate the process of waiting for a hearing at the State Administrative Tribunal is too slow.

Like Western Australia, park operators in New South Wales[113] and Queensland[114] 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 Victoria and South Australia park operators have the option to give a resident:

- either a termination notice, effective immediately, if the resident or their visitor:
    - causes or allows, serious damage to a park;
    - causes danger to persons or property on a park, through an act or by omission; or
    - seriously interrupts the quiet enjoyment of other occupiers of a park[115];
- or an exclusion notice, effective immediately, on the more limited grounds that:
    - a resident or visitor has committed a serious act of violence on the park; or
    - the safety of any person on the park is in danger from a resident or their visitor[116].

If a tenant is given a termination notice for damage, danger or disruption (in Victoria or South Australia) and wishes to dispute the notice, the tenant can remain on the park until the matter is heard by the tribunal. However, if a tenant is given an exclusion notice, the tenancy is suspended for two business days or until the tribunal has heard and determined an urgent application for termination of the tenancy[117].

[113] A similar policy underpins the *Residential Parks Act 1998* (NSW), which is still operative until the *Residential (Land Lease) Communities Act 2013* is introduced.
[114] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 38(1)(b) and (c).
[115] *Residential Tenancies Act 1997* (Vic) – section 302, 303, 317X and 317Y; *Residential Parks Act 2007* (SA) – section 58.
[116] *Residential Tenancies Act 1997* (Vic) - part 8, *Residential Parks Act 2007* (SA) – part 10.
[117] *Residential Tenancies Act 1997* (Vic) – section 371; *Residential Parks Act 2007* (SA) – sections 96 and 97 (The Tribunal must hear an application from the park operator for termination of a tenancy within 4 days of a tenant being issued with a notice to leave for a serious act of violence).

It is an offence for a tenant or visitor who receives an exclusion notice to remain on, or return to, the park[118] and the park operator may seek police assistance if the resident or visitor does not comply with the notice.

In both states, provisions ensuring the proper use of the exclusion notice system include:

- a park operator is not permitted to issue an exclusion notice if a termination notice has already been given for damage, danger or breaching quiet enjoyment;
- it is an offence for an operator to issue an exclusion notice without reasonable grounds;[119]
- it is an offence for a park operator to allow a person to occupy the 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);[120]
- a tenant may make an application to the relevant tribunal to appeal the notice;[121]and
- a tribunal may order :
    - the resumption of the tenancy if satisfied the behaviour will not be repeated or the basis for the tenant receiving the notice has not been made out; and
    - the refund of any rent paid during the exclusion period and reasonable expenses[122].

In South Australia, the tribunal can also make an order, without prior notice being given, restraining a resident and other persons on rented property from engaging in conduct that creates a risk of serious damage to property or personal injury. A person breaching a restraining order faces a maximum of a year imprisonment. The tribunal must give a person subject to a restraining order reasonable opportunity to respond to any allegations and satisfy the tribunal that the order should not continue[123].

The majority of tenants who responded to the issue supported the issuing of an exclusion notice as occurs in Victoria, as it would enhance the safety of residents, particularly with the inclusion of safeguards to prevent the power being misused. Tenants who opposed the notice suggested the matter should be dealt with by police or by some other (unspecified) system.

The majority of park operators also supported the exclusion notice system, however some:

- were not sure how the notice would be enforced in practice;
- requested more than two business days for exclusion;
- did not believe their decision to issue an exclusion notice should be the subject of scrutiny by the SAT; or
- did not support being required to call police before issuing a notice to leave the park.

[118] *Residential Tenancies Act 1997* (Vic) – sections 369 and 372; *Residential Parks Act 2007* (SA) – section 95(6).
[119] *Residential Tenancies Act 1997* (Vic) – section 368A; *Residential Parks Act 2007* (SA) – section 95(5).
[120] *Residential Tenancies Act 1997* (Vic) – section 377; *Residential Parks Act 2007* (SA) section 98.
[121] *Residential Tenancies Act 1997* (Vic) - Part 11; *Residential Parks Act 2007* (SA) – section 116.
[122] *Residential Tenancies Act 1997* (Vic) – section 376; *Residential Parks Act 2007* (SA) – section 97.
[123] *Residential Parks Act 2007* (SA) – section 118.

Option A – No change

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 for violent acts

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:

- 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; and
- the refund of any rent paid during the exclusion period and reasonable expenses; or
- termination of the tenancy if the basis is satisfactorily established and the circumstances are sufficient to warrant it.

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.

Therefore, under this option, park operators would have a choice about how best to deal with actual or threatened violent behaviour depending on the severity of the incident and taking into account any prior history of this behaviour, by:

- making an immediate application to SAT for termination of the tenancy, where the actual behaviour is a concern and particularly in the context of a prior history of anti-social behaviour; or
- issuing an immediate two business 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.

Under both scenarios, park operators should involve the police in considering whether the most appropriate response to the situation is civil or criminal.

If an exclusion notice is issued by the operator, the police could be asked to assist if a tenant refuses to leave a park.

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.

Restraining orders

Consideration could also be given to amending the RPLT Act to give the SAT the specific power to issue an order, without prior notice being given to the tenant, restraining a tenant and other persons on rented property from engaging in conduct that creates a risk of serious damage to property or personal injury. Penalties would apply for breach of such a restraining order. The SAT would be required to give a person subject to a restraining order reasonable opportunity to respond to any allegations and satisfy the tribunal that the order should not continue

Impact analysis

The possible impacts of each option are set out below.

	Potential benefits	Potential disadvantages
Option A – **no change**	• The parties are familiar with the current provisions and processes.	• The operator does not have sufficient scope to deal with behaviour that requires a more immediate response and 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**	• It would allow operators to respond to a situation quickly, if required, to minimise the risk to other people in the park. • It provides operators with some flexibility to tailor the most appropriate response to the circumstances of the situation. • The provisions may act as a deterrent. • The option contains safeguards to ensure the process is not subject to indiscriminate use. • 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.	• Tenants who are issued with an exclusion notice may face homelessness. • Potential for unfair use of the exclusion notice which would require a tenant to defend the notice in SAT. • This option does not address the issue of damage unless there is a direct threat to the safety of others in the park. • There would be resource implications for the SAT in hearing matters quickly when an exclusion notice has been issued.
Option C – **Widen scope to issue termination notice and include ability to issue an exclusion notice for violence**	• If a tenant leaves when issued with a termination notice, he/she would not be in a position to repeat the behaviour, which would give comfort to the operator and other tenants. • If there is a dispute about the facts, the matter would ultimately be determined by the SAT, which would consider the particular circumstances of the case. • The provisions may act as a deterrent. • It would allow operators to respond to a situation quickly, if required, to minimise the risk of harm to other tenants. • It provides 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. • The option provides the operator with a mechanism to address a serious breach of quiet enjoyment.	• Issuing a termination notice for damage, danger or disruption may require further enforcement, which may place other tenants and/or property at risk. • Tenants who leave the park when issued with either a termination or exclusion notice may face homelessness. • Tenants who leave the park when issued with a termination notice may not understand or be aware they have a right to defend the notice, for example if English is a second language or they have an underlying medical issue and require support • 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 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.

Preliminary assessment

The Department's preliminary assessment is that if there is to be change, the advantages of option C outweigh the disadvantages. The negative impact to any person who is temporarily excluded from the park is considered to be outweighed by the potential advantages for the other tenants, the park operator and staff in being able to deal with the matter quickly. The safeguards suggested, including a tenant's right of appeal for reinstatement and compensation reduce the likelihood that the process would be misused. This option would be similar to the systems operating in Victoria and South Australia.

Issues for consideration	
Issue 13(a)	*In relation to a park that you live in or operate, how often has a long-stay tenant threatened or caused serious damage to property or been violent? Frequently, occasionally, never, unsure?* *What (if any) type of park do you live in or operate? For example, a mixed-use caravan park, park home park or lifestyle village.*
Issue 13(b)	*Which option do you prefer? Why?*
Issue 13(c)	*Are there ways to improve your preferred option? Please provide reasons for your response.*
Issue 13(d)	*Can you think of any other ways to address this issue?*
Issue 13(e)	*Do you support to inclusion of a power to issue restraining orders?*

14 PARK RULES

The RPLT Act provides that 'park rules' in relation to a residential park means:

- the rules for tenants prepared by the park operator (if any); and
- the rules for tenants prepared by the park liaison committee (if any)[124].

Park rules set out the rules of conduct specific to each individual park. Given the communal nature of park living, the park rules are a key factor in the successful operation of a park. Recent studies indicated that ensuring that residents feel comfortable with park rules is a key to their everyday wellbeing. In some instances rules might 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 be significant for a resident[125].

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[126]. A copy of the park rules must be provided to the tenant with the agreement and other disclosure documents[127].

A park operator must ensure that the park rules provide for the following matters[128]:

- 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
- emergency procedures.

It is an offence if a park operator does not make park rules in relation to the matters set out above[129].

[124] RPLT Act – glossary.
[125] 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.
[126] RPLT Regulations – schedules 1 and 2 – clause 36; schedules 3 and 4 – clause 37.
[127] RPLT Act – section 11(1)(e).
[128] RPLT Act – section 95(2)(f); RPLT Regulations – regulation 20.
[129] RPLT Regulations – regulation 20.

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 park. If the proposed amendment affects the use of shared premises in the park, the notice must be given at least seven days before the change is to take effect[130].

There is currently no requirement for tenants to agree to an amendment to the rules. However, the 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 tenant[131]. The SAT also has the broad jurisdiction to deal with any dispute arising in connection with a long-stay agreement[132], this would include disputes arising in relation to the application of park rules.

It should be noted that the RPLT Act provides that a 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 residents[133].

However, there is no requirement in the RPLT Act for the park operator to consult with the park liaison committee in relation to all changes to rules.

Issue

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

Objectives

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
- enforced fairly and reasonably.

It is accepted that park operators need to have some flexibility to amend park rules to adapt to changing circumstances or address emerging problems or issues. However, it is equally important that tenants are consulted about any proposed changes.

Discussion

In response to the discussion paper the following concerns were raised by tenants and their representatives in relation to park rules:

- the ability of park operators to unilaterally vary the park rules with no consultation with tenants;
- the fact that park rules are either not enforced by park operators or are not applied consistently; and

[130] RPLT Regulations – regulations 21.
[131] RPLT Act – section 62(4)(c).
[132] RPLT Act – section 62(2).
[133] RPLT Act – section 61.

- 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.

Park operators have indicated that it is important for tenants to understand the rules applicable to their park and that compliance with the rules is a key to the communal nature of park living.

In some jurisdictions the legislation requires that park rules be reasonable and are enforced consistently and fairly[134]. In some cases an obligation is imposed on the park operators to take reasonable steps to ensure compliance with the rules by tenants[135] or on tenants to comply with the park rules and take steps to ensure compliance by occupants and visitors[136].

With regards to amendment of the rules, some states require that a park operator consult with tenants[137] or the resident's committee (if any)[138]. In Queensland a more formal process is in place, which provides for notice of a proposed change to be given to tenants, allows for tenants to make objections, requires those objections to be considered by a committee and provides for the tribunal to make a final decision (if required)[139].

Most jurisdictions provide that the relevant tribunal may make orders in relation to unreasonable park rules and may declare that a rule is void or, in some cases, order a variation of the rule[140].

Some jurisdictions also limit the matters in relation to which park rules may be made[141] or prohibit certain types of rules. For example, the New South Wales Act provides that a rule is prohibited if it requires or has the effect of requiring a home owner to replace or remove an older home, or to make upgrades or improvements to a home, for any reason that is not related to health or safety[142]. This ability to prohibit the making of certain types of park rules operates to provide some balance and protection for tenants, given that park operators have the power to change the rules over time.

Option A – No legislative change

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 the 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.

[134] *Residential Tenancies Act 1997* (Vic) – sections 186 and 206ZY; *Residential (Land Lease) Communities Act 2013* NSW – section 86 and 93.
[135] *Residential (Land Lease) Communities Act 2013* NSW – section 92; *Residential Parks Act 1998* (NSW) – section 65; *Residential Tenancies Act 1997* (Vic) – sections 186 and 206ZY.
[136] *Residential (Land Lease) Communities Act 2013* NSW – section 92.
[137] *Residential Tenancies Act 1997* (Vic) – section 206ZZ.
[138] *Residential Parks Act 1997* (SA) – section 8; *Residential (Land Lease) Communities Act 2013* (NSW) – section 90.
[139] *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) – sections 229 – 234; *Manufactured Homes (Residential Parks) Act 2003* (Qld) – sections 78 – 83.
[140] *Residential Parks Act 1998* (NSW) – sections 88 and 90; *Residential (Land Lease) Communities Act 2013* (NSW) – section 95; *Residential Parks Act 2007* (SA) – section 9; *Residential Tenancies Act 1997* (Vic) – sections 187 and 206ZZA.
[141] *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) – section 228; *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 77; *Residential Parks Act 2007* (SA) – section 6.
[142] *Residential (Land Lease) Communities Act 2013* (NSW) – section 91.

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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – No legislative change	• Park operator retains flexibility in relation to park rules, is able to adapt quickly to emerging issues.	• Tenants vulnerable to variations in park rules, with no consultation or input.
Option B – Include specific provisions about the nature, enforcement and amendment of park rules	• 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.	• 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.

Issues for consideration	
Issue 14(a)	*Which option do you prefer? Why?*
Issue 14(b)	*Can you think of other ways to address this issue?*
Issue 14(c)	*What would be the likely impact on park operators and/or tenants of implementing Option B in relation to park rules? Please identify any benefits, or potential costs or difficulties that might arise.*
Issue 14(d)	*Should the regulations specify any additional matters about which park rules should be made? What are they and why should they be required?*
Issue 14(e)	*Are there any types of rules that should be prohibited? What are they and why should they be prohibited?*
Issue 14(f)	*Should any other changes be made in relation to park rules?*

15 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.

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 increase[143]. The minimum interval between rent increases is six months[144]. These provisions of the RPLT Act can be excluded or limited by the parties[145]. See part 8 of this paper for discussion on contracting out of the Act.

For home owners, rent can only be reviewed in accordance with the tenancy agreement[146]. The rent can be increased at minimum intervals of 12 months[147]. In addition, the agreement can only specify a single basis for calculating the rent payable on and after the review date, although the agreement can specify different bases for calculation for different review dates. The parties cannot contract out of these requirements of the RPLT Act.

Long-stay tenants can apply to the SAT for a determination of the amount of rent payable under a long-stay agreement, having regard to the terms of the agreement[148]. Tenants can also apply to the SAT for an order reducing the amount of rent payable on the grounds that there has been a reduction of benefits provided or that the park operator, in determining the rent, was motivated in whole or in part to terminate the tenancy[149].

15.1 FREQUENCY OF RENT INCREASES

As mentioned above, the minimum interval permitted between rent increases under the RPLT Act is six months for renters and 12 months for home owners.

[143] RPLT Act – section 30.
[144] 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.
[145] RPLT Act – section 30(5).
[146] RPLT Act – Schedule 1, Item 4.
[147] 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.
[148] RPLT Act - section 62.
[149] RPLT Act – section 63.

The residential parks legislation in other jurisdictions varies; in some instances the minimum period between rent increases is six months[150], in others it is 12 months[151] and in some jurisdictions a minimum period is not specified in the legislation, but the frequency of rent increases will be taken into account by the relevant tribunal in determining whether a rent increase is excessive[152].

The Residential Tenancies Act in Western Australia provides for a minimum period of six months between rent increases[153]. This is consistent with the period applied to renters under the RPLT Act.

Responses to the discussion paper indicate that, while there are not particularly strong views on this issue, stakeholders have varying views as to whether changes are required to the laws relating to the frequency of rent increases under the RPLT Act. Some respondents were of the view that no change is necessary; some were of the view that six months is an adequate period, while others considered that rent increases should be applied annually.

The Department's view is that no change is required at present, unless there is clear evidence that amendment is necessary.

Issues for consideration	
Issue 15.1	*Are any changes required to the RPLT Act concerning the frequency of rent reviews? If so, what should be the minimum period between reviews for renters and for home owners?*

15.2 METHOD OF VARYING RENT

Issue

The RPLT currently requires that a rent review provision in a site-only agreement (i.e. an agreement with a home owner) must specify, for each review, a single basis for calculating the rent payable on and after the review date[154]. Different methods of review can be set out for different review dates.

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 rental. 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.

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 Consumer Price Index or that market reviews of rentals not be permitted.

[150] *Residential Tenancies and Rooming Accommodation Act 2008* (Qld – section 93; *Residential Tenancies Act 1997* (Vic) – sections 152 and 206V.
[151] *Residential Parks Act 2007* (SA) – section 21; *Residential (Land Lease) Communities Act 2013* (NSW) – section 67.
[152] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 70; *Residential Parks Act 1998* (NSW) – section 57.
[153] Residential Tenancies Act – section 30.
[154] RPLT Act – Schedule 1, Item 4(3).

Objectives

To provide fairness and certainty in relation to rent increases for tenants (many of whom are on fixed incomes), while maintaining some flexibility to allow for park owners to adequately recover costs and make a reasonable return on their investment.

Discussion

At present, the parties to a tenancy agreement under the RPLT Act may agree to a number of different types of methods of rent review, for example:

- rent variation based on changes in the consumer price index (CPI);
- a set percentage increase;
- an increase by a set amount; or
- market review of rental.

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 agreement[155]. Under the Residential Tenancies Act, the method of calculating the increase must be objectively measurable[156], market reviews are not considered to be an objective measure and are therefore not permitted under that Act.

Linking rent reviews to CPI

Given that residential park tenants are often on fixed incomes, tenant representatives have stated a preference for the RPLT Act to only allow the use of rent review methods that are linked to cost of living increases, such as the CPI. Park owners have indicated that greater flexibility should be permitted.

As noted in the discussion paper[157], in its report 'Statutory Review of the *Residential Tenancies Act 1987* (WA)', Stamfords Advisors and Consultants recommended that the Residential Tenancies Act not be amended to prescribe a maximum allowable rent increase, either directly (by way of a stated maximum percentage increase) or indirectly (by link to the CPI or other index). The report noted that the appropriateness of a rent increase depends on many factors, including the current rent paid, current market rent, and whether any improvements have been made to the premises. The imposition of a prescribed allowable increase would not take into account such factors.

[155] Residential Tenancies Act – section 30.
[156] Explanatory memorandum - Residential Tenancies Amendment Bill 2011 – page 16.
[157] Discussion Paper – page 25.

In its response to the Stamfords Report, the Department proposed that there be no introduction of rent level setting or capping in the Residential Tenancies Act as-

> "…such regulation would act as a disincentive to investment and have a detrimental impact on both property owners and tenants in terms of property values and availability of housing stock to rent."[158]

Historically, government is reluctant to impose caps, or place significant restrictions on, levels of rental in a tenancy market. Accordingly, mandating the use of rent review methods linked to CPI is not considered a viable option without evidence of a clear need for this level of intervention in the market.

Market reviews of rental

The RPLT Act contemplates that some agreements may provide for a review of rent on a market rent basis and requires that, in calculating the amount of rent to be payable, the park operator must have regard to a report obtained from a licensed land valuer[159]. Reponses to the discussion paper highlight concerns that tenants have in relation to this market review process. For example:

- market reviews provide less certainty than fixed methods of review, this means that tenants may not be in a position to assess whether they will be able to afford the rental as the lease term progresses;
- in some instances there has been limited transparency in relation to market reviews, particularly given that the RPLT Act does not require that tenants have access to the valuation reports upon which the reviews are based; and
- valuers may not base valuations on comparable premises. For example, rents payable in lifestyle villages should not be used to determine the rental for a mixed-use park. In some instances, market valuations would prove difficult simply because of the lack of comparable premises and accessible data.

Option A –Status quo

Review method to be specified for agreements with home owners. No requirement to specify method of review for renters.

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.

[158] *Review of the Residential Tenancies Act (1987) WA – Policy Position Paper January 2008*, Department of Consumer and Employment Protection, page 84.
[159] RPLT Act – section 31.

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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – no change	• Park operators retain flexibility in relation to renters.	• Uncertainty remains for renters about the rent review methods to be applied. • Renters under RPLT Act treated differently to renters under the Residential Tenancies Act.
Option B – Review method to be specified in agreement - method agreed by the parties	• Provides certainty to all tenants by requiring the review method to be specified. • Consistent with the Residential Tenancies Act.	• Market reviews would continue to present difficulties for some tenants – uncertainty, difficulties in identifying comparable premises.
Option C – Review method to be specified in agreement – method agreed by the parties, but some methods prohibited (e.g. market reviews of rental)	• 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.	• If market reviews are prohibited it may make it less attractive for park owners to offer long-term leases as they could potentially be locked into leases with lower rentals that reduces return on investment.

Issues for consideration	
Issue 15.2(a)	*Which option do you prefer? Why?*
Issue 15.2(b)	*Can you think of other ways to address this issue (including a combination of elements from the options outlined above)?*
Issue 15.2(c)	*What would be the cost implications of the different options? Please provide quantifiable information if possible.*

Issues for consideration	
Issue 15.2(d)	*If you do not support option C (review method specified but prohibit market rent reviews), please provide your reasons for supporting the continuation of market rent reviews? Please provide quantifiable information if possible.*

15.3 UNFORSEEN COSTS

Issue

Park operators require the continued capacity to budget and achieve a commercially viable return on their investment in the park. Any limits on the ability to vary rents as discussed in part 15.2 may restrict the capacity of park operators to recover genuine increases in costs. 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 unforseen costs.

Objective

To allow for sufficient flexibility so that park operators can recover genuine increases in operating costs.

Discussion

In their responses to the discussion paper, a number of park operators indicated that they need the ability to increase rents in order to address any unforseen increases in the costs of managing a park, such as increased rates and taxes. Tenants and their representatives were of the view that these costs should be covered by the rents already payable.

For example, under the *Manufactured Homes (Residential Parks) Act 2003* (Qld) a park operator may 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);
- unforseen 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 increase[160].

Option A – Status quo

Park operators' ability to recover additional costs is dictated by their particular lease agreement.

[160] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 71.

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 unforseen 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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – no change	• Park operators continue to have flexibility to determine how additional costs will be recovered in the lease agreement.	• May not provide necessary flexibility to allow for recovery of all unforseen costs by park operators if not addressed in the agreement.
Option B – Allow for increases in rental for specified reasons, provided park operator provides adequate notice and justification	• Park operators will have the flexibility to increase rentals if the increases are justifiable. • Requirement for determination by the SAT if no agreement reached should provide comfort to tenants. • Allows for parties to agree to a rent increase, without the need for an application to the Tribunal.	• 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. • Increase in the number of matters before the SAT – cost implications.

Issues for consideration	
Issue 15.3(a)	*Which option do you prefer? Why?*
Issue 15.3(b)	*Can you think of other ways to address this issue (including a combination of elements from the options outlined above)?*
Issue 15.3(c)	*What would be the cost implications of the different options? Please provide quantifiable information if possible.*
Issue 15.3(d)	*In relation to option B (increases in rent allowed for specified reasons), in what instances do you believe the park operator should be entitled to increase the rent?*

16 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 fee[161];
- rates, taxes and charges – these costs are generally the responsibility of the park operator, unless the agreement provides otherwise[162];
- the cost of preparing a long-stay agreement – these costs are the generally the responsibility of the park operator, unless the agreement provides otherwise[163]; and
- commissions associated with the selling of a home on-site[164].

The *Residential Parks (Long-stay Tenants) Regulations 2007*[165] 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 a park operator (who is not acting as the selling agent) to screen the suitability of prospective purchasers of a home owned by a tenant.

The RPLT Act provides that before a park operator makes 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 operator[166]. 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 agreement[167].

16.1 COST RECOVERY IN RELATION TO FEES

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 for details).

It has been suggested that, as a general principle, these additional fees 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. The costs should also only be recovered once – there should be no 'double dipping' by charging for the same thing in different ways.

An exception to the cost recovery principle is the exit fee, which is sometimes expressed as a percentage or a set fee. Exit fees are discussed in greater detail in part 16.5.

[161] Section 12.
[162] Section 32 and Schedule 1 – clause 15.
[163] Section 14.
[164] Section 57..
[165] Regulation 10 and Schedule 8.
[166] Section 11(1)(c).
[167] Section 62(2)(b).

As mentioned above, either party may apply to the SAT for relief if a dispute arises in connection with any payment to be made under a long-stay agreement[168].

Proposed change

It may be appropriate to amend the RPLT Act to specifically provide that fees for items other than rent should be charged on a cost recovery basis and to give the SAT the jurisdiction determine applications in relation to such matters.

Issues for consideration	
Issue 16.2(a)	*Do you support to application of a cost recovery principle in relation to fees and charges? Please give reasons for your answer.*
Issue 16.2(b)	*Are there any fees, other than exit fees, to which the costs recovery principle should not apply?*

16.2 COSTS OF TENANCY AGREEMENT

Under the RPLT Act the costs of preparing a long-stay agreement are the generally the responsibility of the park operator, unless the agreement provides otherwise[169]. 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. The issue of contracting out of the Act is discussed more broadly in part 8 of this paper.

Proposed change

It is proposed 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.

Issues for consideration	
Issue 16.2	*Do you support the proposal for park operators be prohibited from passing on the costs of preparation of a long-stay agreement to the tenant? Please give reasons for your answer.*

16.3 VISITOR FEES

Currently, the RPLT Regulations permit a park operator to charge a tenant a visitor fee for overnight guests[170]. The legislation permits the charging of visitor 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.

[168] Section 62(2)(b).
[169] Section 14.
[170] Regulation 10 and Schedule 8, Item 1.

The SAT has the jurisdiction to consider a dispute in relation to visitors' fees.

Issue

Disputes often arise about the charging of visitors' fees. There have been calls for greater regulation in relation to this area.

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 visitors, so as to ensure the long-term viability of the park, while ensuring that the charging of visitor fees reflects the actual cost incurred in providing those services to visitors.

Discussion

In response to the discussion paper some tenants reported that, even where they are in fully self-contained accommodation and their guests do not use other shared facilities such as the pool, some park operators are still charging the tenant a fee as much as $25 for overnight guests.

Tenants were of the view that they should not be charged a visitor fee in this situation. This is a major issue for tenants who require a carer to stay overnight or who have family members visit regularly.

Park operators have indicated that they wish to retain the discretion to charge visitor fees in order to cover costs and to make provision for the maintenance of facilities. 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. In addition, park operators state that there may be increased costs incurred by the operator, such as insurances, regardless of whether shared facilities are used by visitors or not.

A number of park operators indicated that, although their lease agreements give them the right to charge visitor fees, they often do not actually charge the fee unless a visitor stays for a long period.

Option A – No legislative change

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

Under this option, 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

Under this option, 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

Under this option the RPLT Act would be amended to prohibit the charging of visitor fees.

Impact analysis

The possible impacts of each option are set out below.

	Potential benefits	Potential disadvantages
Option A – no change	• Park operators retain flexibility to select approach to visitor fees which best secures overall park viability. • Operators can determine amount of visitor fee based on extent of shared facilities provided and number of visitors. • SAT may make a determination in relation to a dispute about visitors' fees.	• Home owners in self-contained dwellings are contributing to a service that they may not use. • Tenants who require the assistance of a carer may be charged for them to visit at their home. • Fees are not charged for visitors in standard residential tenancies. • Tenants in mixed use parks may be subject to fluctuations in the rate of visitor fees payable, especially during peak tourist periods.
Option B – Visitor fees for use of shared facilities	• 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. • Ensures that only those visitors who use shared facilities contribute to their cost. Consistent with the accepted 'user-pays' principle.	• 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). Under this option these costs could not be recovered from tenants by the operator. • 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 visitor fees charged e.g. during peak periods.

	Potential benefits	Potential disadvantages
Option C - Visitor fees only after stay exceeds minimum period	• Tenants do not have to pay for family, friends or carers visiting them at their home for short periods. • Allows operators 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.	• Limits the flexibility for park operators. • 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 visitor fee payable in order to recover costs. • In order to keep costs to a minimum during those periods when a visitor fee cannot be charged, operators may: - 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; - increase rents overall. • Home owners in self-contained dwellings may be contributing to a service that they 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	• No financial impact if visitors stay overnight.	• May have a negative financial impact on park operators. • Could result in an increase in rent.

Issues for consideration	
Issue 16.3(a)	*Which option do you prefer? Why?*
Issue 16.3(b)	*Can you think of any other ways to address this issue (including a combination of elements from the options outlined above)?*
Issue 16.3(c)	*What would be the costs implications of the different options? Please include quantifiable information if possible.*
Issue 16.3(d)	*In relation to option C (visitor fees after minimum period) – what should the minimum period be? On what basis should it be calculated – e.g. per visit or combined stays over a given period?*

Issues for consideration	
Issue 16.3(e)	*How should carers treated in relation to visitor fees? Should tenants be exempt from the payment of visitor fees in relation to visits required from carers and health professionals required as a medical necessity?*
Issue 16.3(f)	*If you have a carer visit you at your residential park are you required to pay visitor fees? If so, how much and is this affordable (when compared to your weekly rent)?*

16.4 ENTRY FEES

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 bond[171].

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;
- 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 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 owner.

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 community in Western Australia.

16.5 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 (sometimes referred to as early departure or termination fees), shared equity/capital gain sharing arrangements and opportunity fees are not currently regulated by the RPLT Act.

[171] RPLT Act – section 12(1)

It appears that these types of fees are becoming more prevalent in Western Australia, and it is appropriate therefore that consideration be given to the types of consumer protection measures that should be put in place.

Objective

Provide for fairness and a degree of certainty for those tenants who utilise shared equity 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.

Discussion

Shared equity or capital gain sharing arrangements are not new in Australia, but are a relatively recent development in relation to park home sales and purchases within residential parks.

These agreements are generally offered to residents who cannot afford the full purchase price of a park home, or where a reduced weekly rental/site fee is offered in return for a sharing agreement with the operator. Under a shared equity arrangement, the resident buys a major share of the park home (for example 70%) with the park operator retaining the balance. Under the model, any capital gains upon sale are shared between the parties in the same proportion, but if the park home sells at a loss the operator's share is based on the original purchase price.

Shared equity arrangements generally involve either:

- a shared ownership arrangement between the park owner and home owner whereby equity is apportioned (usually on percentage basis) and divided upon sale of the dwelling; or
- a loan arrangement whereby the cost of the park home is reduced in return for the operator receiving a share of the capital gain upon sale.

The New South Wales Act[172] includes a provision which enables future site agreements to provide that, on the sale of a home on the residential site, the home owner will pay to the operator either (but not both):

- an agreed share of the capital gain in respect of the home; or
- an agreed on-site premium of the total sale price of the home as determined in the agreement.

In the New South Wales Act, the term 'capital gain' means any increase between the amount that the home owner paid for the home and the amount that they sell it for. Site fees and any fees or charges payable under the site agreement are not to be included in the calculation of the capital gain. The New South Wales Act also permits the charging of entry fees, deferred site fees and exit fees in conjunction with the sale amount.

[172] *Residential (Land Lease) Communities Act 2013* (NSW) – sections 110 and 111 – it should be noted that this provision was amended as a result of feedback received during consultation.

Some tenant representatives in NSW have voiced concerns with the New South Wales Act's provisions. In its response to the initial NSW Fair Trading Discussion Paper, the Park and Village Service (PAVS), which is a resource service funded by NSW Fair Trading under the Tenant's Advice and Advocacy Program, made the following comments -

> *Residents purchase their dwellings outright and are responsible for all of the associated costs such as insurance, repairs and maintenance…Rents are constantly increasing in order that park operators are able to maintain a profit. Homes in residential parks rarely increase in value and capital gains therefore do not occur. However, introducing such a measure could deter people from choosing a residential park lifestyle because of the potential loss of money at the end of the tenancy, adversely affecting the industry rather than sustaining it or supporting growth*[173]

PAVS also raised concerns with the definition of 'capital gain' in the New South Wales Act, as it believes it fails to take into account any money spent by the home owner to improve the home and consequently the home's value.

Both PAVS and the Affiliated Residential Park Residents Association NSW Incorporated (ARPRA) consider that shared equity may actually make dwellings in residential parks more, rather than less, expensive, especially when exit fees are taken into account.

There are a number of issues that arise in connection with shared equity arrangements, including that:

- many residential parks do not allow a prospective tenant to install their own privately owned park home. A requirement of entry is that tenants must purchase a park home installed by the park operator. A park operator can charge up to twice the price of the same home purchased direct from the manufacturer. This large capital outlay acts to encourage the use of shared equity agreements;
- there are often other costs and charges associated with the offering of shared equity. For example, residents in one New South Wales park have reported that all incoming residents who purchase shared equity homes are charged an 'opportunity fee' of 1.5% of the full sale price, for 10 years. As a result, while the purchaser has paid upon entry 65% of the cost price (under the shared equity agreement), they end up owning only 50% of the park home in ten years' time[174];
- shared equity agreements may include clauses that seek to ensure:
    - the park operator bears none of the risk in relation to their investment;
    - the operator has the first option to buy the residence; and/or
    - the inclusion of 'exit events' that trigger a requirement for the resident to purchase the operator's share in the park home within a set time period. 'Exit events' could potentially include any sale, transfer, disposal of the dwelling or equity interest, the termination of the site agreement, death of the tenant or an event of default;

[173] Park and Village Service – Submission to NSW Residential Parks Act review, 29 February 2012, page 48
[174] ARPRA, Residential Park Living: Finding the Problems, Looking for Solutions, page 92

- potential conflict of interest issues arise where there is competition between shared-equity and non-shared equity park homes in the same park during a sale process where the park operator is the selling agent;
- shared equity arrangements could be used as a reason to avoid or justify reduced capital and maintenance expenditure by the park operator on the basis of poor cash flow[175]; and
- concerns have been raised in New South Wales that some terms of shared equity agreements may not be consistent with the provisions of the regulating legislation for tenancies in residential parks in that jurisdiction.

The shared equity agreements being used in New South Wales have a number of similarities to loan/lease or licence residence contracts used by the retirement villages industry in Western Australia. However, while the retirement villages legislation in Western Australia contains some consumer protections for residents in retirement villages, these protections have not been proposed for park homes. This in part reflects the fact that residents in a retirement village have, through a combination of their residence contract and the *Retirement Villages Act 1987*, a higher degree of security of tenure than residents living in a lifestyle village or park home park.

While one option would be to prohibit exit fees and shared equity arrangements before they become more widespread in Western Australia, this is not considered appropriate as it may restrict innovation in the sector and inhibit operators from achieving a commercially viable return on their investment.

In relation to exit fees, a number of lifestyle village operators responded to the discussion paper in favour of exit fees for the following reasons:

- exit fees often represent the only chance for the park operator to recoup their accrued rent losses;
- the amenities and location of the park contribute to the dwelling's resale value - as such, the exit fee should ensure the ongoing maintenance of the park and help to keep rents as low as possible; and
- exit fees are a means by which individual residential parks can attempt to distinguish their product offering and secure competitive advantage.

Rather than prohibit these arrangements outright, the Department's preferred position is to amend the provisions of the RPLT Act so that they apply to shared equity arrangements whether included as a term of a long-stay agreement or as a term of a separate agreement (for example, a park home purchase agreement). The basis for this approach is that residents should retain the same protections under the RPLT Act regardless of the method of purchase of their dwelling. While contracting out of the RPLT Act is considered generally at part 8, in relation to shared equity the Department also proposes to amend the RPLT Act to provide that the parties cannot contract out, or agree to alternative or inconsistent terms to the RPLT Act, in a shared equity arrangement or park home purchase agreement.

[175]ARPRA, Residential Park Living: Finding the Problems, Looking for Solutions, page 93.

It is therefore viewed as appropriate to insert some consumer protections in the RPLT Act that place parameters around the fees and charges that a tenant will be required to pay when they leave a park and sell their park home.

Option A – Status quo

No legislative change. Exit fees and shared equity arrangements would continue to be unregulated 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 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 practice.
- Where it can be shown that proper disclosure did not occur, or where the operator attempts to charge an outgoing tenant other charges/fees/premiums in addition to the exit fee, any such terms will be unenforceable.

Impact analysis

The possible impacts of each option are set out below.

	Potential benefits	Potential disadvantages
Option A – status quo		• 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.	• Provides operators with the continued flexibility to use exit fees or shared equity 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).	• Additional administrative burden on park operators.

Issues for consideration	
Issue 16.5(a)	*Do you support the proposal that park operators should be permitted to offer shared equity and charge exit fees? Why or why not?*
Issue 16.5(b)	*What are the likely cost implications for park operators if they were not permitted to offer shared equity and/or charge exit fees? Please provide quantifiable information if possible.*
Issue 16.5(c)	*Are there any additional parameters that should be included to regulate shared equity arrangements or the charging of an exit fee?*
Issue 16.5(d)	*If, as a park operator, you currently utilise shared equity and/or exit fees, please provide details.*
Issue 16.5(e)	*Can you suggest other ways to address this issue?*

16.6 PAYING FOR ELECTRICITY

The RPLT Act restricts the charges payable by long-stay tenants during a tenancy to rent, a security bond, an option fee, authorised charges (under the Act) and prescribed payments.

Regulation 10 and Schedule 8 of the *Residential Parks (Long-stay Tenants) Regulations 2007* deal with these prescribed payments and include charges for electricity consumed by the tenant, if the tenant has a separate electricity meter[176]. The *Caravan Parks and Camping Grounds Regulations 1997*[177] requires that all long-stay sites are to 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.

Currently in Western Australia, there are essentially two suppliers of electricity to domestic consumers that are licensed under the *Electricity Industry Act 2004* (EI Act):

- Synergy supplies electricity from the south-west network; and
- Horizon Power supplies electricity outside the south-west network.

However, park operators can on-sell electricity[178] supplied by Synergy or Horizon Power within their park without a licence, provided they comply with the Electricity Industry (Caravan Park Operators) Exemption Order 2005 (Exemption Order). The Exemption Order includes a requirement (amongst other things) that the park operator charges no more than the regulated maximum tariff, comprising:

- electricity services, including meter reading and the preparation and issue of accounts in relation to the supply of electricity to a site; and
- metered consumption

in accordance with the relevant electricity by - laws[179].

The Exemption Order also requires the park operator to make information available, for example by issuing an account, to each long-stay tenant that clearly sets out:

- the quantity of electricity supplied to the resident; and
- the fees and charges payable by the resident for electricity services and electricity supplied.

Energy rebates, which are paid to eligible long-stay tenants, are also available through Synergy and Horizon Power, depending where the park is located.

[176] RPLT Regulations - Schedule 8, item 3.
[177] Schedule 7, item 37(2).
[178] Park operators who generate electricity for sale to tenants for whom the caravan park is their principal place of residence can only recover their costs of generation and the regulated charge for electricity services.
[179] Energy Operators (Electricity Retail Corporation) (Charges) By-laws 2006 or Energy Operators (Regional Power Corporation) (Charges) By-laws 2006.

Issue

Approximately 12% of all complaints to the Department since the commencement of the RPLT Act involve concerns about fees and charges, including charges for electricity. Feedback from the discussion paper also highlighted that some long-stay tenants were concerned about the cost of electricity services, including meter reading fees and the rate at which electricity is being charged.

Objectives

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.

Discussion

The other states deal with electricity charges in different ways:

- some jurisdictions apportion responsibility for various aspects of electricity charges between the operator and tenant[180];
- some jurisdictions provide for restrictions on the charging for electricity, including the requirement that the premises is separately metered, and having regard to the relevant electricity laws[181]; and
- some jurisdictions have specific provisions regarding access to information regarding the calculation of charges.[182]

Option A – No legislative change 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.

[180] For example, sections 162-164 and sections 206ZE-206ZF *Residential Tenancies Act 1997* (Vic), section 37 *Residential Parks Act 1998* (NSW).
[181] For example, section37 *Residential Parks Act 1998* (NSW), sections 99, 99A *Manufactured Homes (Residential Parks) Act 2003*.
[182] For example, section37 *Residential Parks Act 1998* (NSW), section 43(3) *Residential Parks Act 2007* (SA).

Impact analysis

The possible impacts of each option are set out below.

	Potential benefits	Potential disadvantages
Option A – no change (non-legislative option involving education)	• The option would assist the relevant parties to comply with current laws (by setting out their respective obligations).	• 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	• The option would assist the relevant parties to comply with current laws (by setting out their respective obligations). • The option would allow restrictions to be placed on the charging for electricity to the tenant, regardless of who generates the electricity. • The option would provide clarity about the rules in charging for electricity.	• This option may cause confusion between existing and new tenants (as the contract terms would appear different).

Issues for consideration	
Issue 16.6(a)	*Do you live in, or operate, a park where electricity is supplied by a retailer other than Synergy or Horizon Power?* *If so, who supplies electricity to the park?* *If you are a tenant, do you pay comparable electricity charges to a person who does not live in a residential park? Why or why not?*
Issue 16.6(b)	*Which option do you prefer? Why?*
Issue 16.6(c)	*Can you think of any other ways to address this issue?*

17 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 tenants[183]. 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.

The discussion paper noted that complaints received by the Department for the period 2007-2011 indicated that issues about shared premises and maintenance of those premises are the third biggest category of complaints made to the Department in relation to residential parks (11%). Responses to the discussion paper confirm that tenants continue to have concerns about the provision and maintenance of shared premises.

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 repair[184]. 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 this essential obligation (see part 8 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, and the SAT has the power to make an order requiring the park operator to perform the obligation[185].

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 premises[186].

Similar provisions are included in the legislation in other jurisdictions.

[183] RPLT Act – glossary.
[184] RPLT Act – section 32 and schedule 1 Item 7.
[185] RPLT Act - section 62(4)(b) – this section provides that the SAT may require any action in performance of a long-stay agreement.
[186] RPLT Act – section 63.

17.1 SERVICES AND FACILITIES PROMISED BY THE PARK OPERATOR

Issue

Whether the RPLT Act should 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.

Discussion

A number of respondents to the discussion paper 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, for example a security system or community hall. This could be a more significant issue in relation to lifestyle villages that promote more extensive facilities, such as golf courses or bowling greens.

Failure by a park operator to meet commitments about facilities or services could be addressed in the following ways:

- by requiring the park operator to provide the promised facility or service; or
- by compensating the tenant, either through payment of compensation or by reducing the rent.

Require the park operator to provide the service or facility

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' [187]. 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.

The discussion paper asked whether the SAT should have the power to order that works be carried out when facilities are below the standard promised[188]. Tenants and their representatives supported this proposal, with some respondents arguing that it is only fair to require a park operator to provide what has been promised. Park operators were opposed, with some arguing that this could impose additional operating costs on operators (particularly where there were differing views as to the standards required) possibly leading to solvency issues.

Reduction in rent or payment of compensation

The RPLT Act 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

[187] RPLT Act – section 62(4)(b).
[188] Discussion Paper – page 33.

provided as part of the shared premises since the contract was entered into[189]. 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 provided[190]. An equivalent provision has been included in the New South Wales Act[191].

In responses to the discussion paper tenants and their representatives generally supported the inclusion of a provision of this nature. Park operators did not support this proposal and raised concerns about the potential for use of such a provision to seek a reduction in rent in circumstances where a tenant has not suffered a loss in utility in relation to the park. Some park operators considered that a provision of this nature was not necessary as tenants have other legal options if they consider that they have been misled, for example, action under the Australian Consumer Law (ACL).

The ACL 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. In addition, there may be difficulties proving that a representation was false or misleading if, at the time the representation was made, the park operator did intend to provide the relevant facilities or services.

Option A – Status quo

Tenant's rights and remedies limited to those currently provided in the RPLT Act and the ACL.

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.

[189] RPLT Act – section 63.
[190] *Manufactured Homes (Residential Parks) Act 2003* (Qld) - section 72.
[191] *Residential (Land Lease) Communities Act 2013* (NSW) – section 64.

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.

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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**		• 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.
Option B – **Give the SAT the power to order specific performance, compensation, a reduction in rent or rescission.**	• 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.	• 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.

Issues for consideration	
Issue 17.1(a)	*Which option do you prefer? Why?*
Issue 17.1(b)	*Can you think of any other ways to address this issue?*
Issue 17.1(c)	*What would be the likely impact on park operators and/or tenants of including the proposed changes in relation to promised facilities or services? Please identify any benefits, or potential costs or difficulties that might arise.*
Issue 17.1(d)	*If option B is implemented – should the requirements apply only in relation to representations made in writing, or should the SAT also have the power to take into account oral representations?*

Issues for consideration	
Issue 17.1(e)	*If option B is implemented – could the requirements also be extended to apply to representations made after a contract has been entered into – for example, where a park operator promises new facilities to existing tenants?*

17.2 ONGOING MAINTENANCE AND REPAIR

Issue

In response to the discussion paper, tenants 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.

Discussion

Currently, 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 obligation[192].

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 residents[193].

The discussion paper asked whether the SAT should have the specific power to order that works be carried out when facilities are below the standard promised or what is considered reasonable[194]. This would reinforce current contractual obligations with a statutory obligation.

Tenants and their representatives supported this proposal and were of the view that it was reasonable for park operators to be required to undertake necessary work to maintain shared facilities to an appropriate standard. Some expressed the view that operators need to budget appropriately to ensure that maintenance and improvements to the park are ongoing.

Park operators did not support this proposal and were of the view that it could result in unnecessary applications to the SAT, with some expressing the view that there might be a difference of opinion between operators and tenants as to what is considered 'reasonable'. Some park operators were also concerned that it might result in a loss of control by operators in relation to maintenance and works schedules, with a resulting adverse impact on the park operator's budget.

[192] RPLT Act - section 62(4)(c).
[193] *Residential (Land Lease) Communities Act 2013* (NSW) – section 37.
[194] Discussion Paper – page 33.

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 on the park operator in the RPLT Act and give the SAT the specific power to make orders requiring that work be done by a park operator in order to comply

Under this option the RPLT Act would 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 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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**	• SAT currently has the power to order performance of obligations under a long-stay agreement.	• 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**	• Greater certainty provided by imposing a statutory obligation. • Provides a clear power for SAT to order that works be undertaken.	• May result in an increase in the number of matters before the SAT – cost implications. • May result in an increase in rents to cover potential costs.

Issues for consideration	
Issue 17.2(a)	*Which option do you prefer? Why?*
Issue 17.2(b)	*Can you think of any other ways to address this issue?*
Issue 17.2(c)	*What would be the likely impact on park operators and/or tenants of the options? Please identify any benefits, or potential costs or difficulties that might arise.*

17.3 TRANSPARENCY IN RELATION TO MAINTENANCE COSTS

Issue

The survey undertaken as part of the consultation process asked whether costs of maintaining and improving park facilities should continue to be included in the rent, as opposed to the park operator charging a separate fee.

Objective

To improve transparency and accountability in relation to expenditure on maintenance and capital improvement.

Discussion

The responses to the survey indicate that the majority of respondents, both tenants and park operators, were of the view that the rent should cover all costs, including maintenance and repairs of common facilities. However, a number of tenant respondents were of the view that there should be greater transparency with regards to how the maintenance component of rent is allocated.

Improved transparency in relation to monies spent on maintenance appears to be of particular significance in relation to mixed-use parks. A number of respondents, who are tenants in mixed-use parks, expressed the view that the tourists should be required to pay for the maintenance of shared facilities as they were the ones using those facilities. These respondents indicated that they were responsible for maintaining their own homes and sites (including gardens) and were of the view that they should not pay for facilities that they do not use, such as ablutions blocks and camp kitchens. It should be noted that these additional costs might be covered by the higher rates that tourists pay for their sites.

Some tenants also expressed concern that park operators who own more than one park might use funds from one park to pay for maintenance or improvements in relation to another park.

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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**	• No additional administrative requirements imposed on park operators. • Tenants continue to have remedies in instances where maintenance and repair obligations are not met by the park operator.	• No transparency in relation to allocation of funds to meet maintenance and repair obligations.
Option B – **require park operators to report annually on expenditure on maintenance and capital**	• 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.	• Greater administrative burden on the park operator. • May result in increased costs, which could be passed on to tenants.

Issues for consideration	
Issue 17.3(a)	*Should park operators be required to report annually on expenditure on maintenance and capital replacement? Please give reasons for your answer.*
Issue 17.3(b)	*What would be the likely impact on park operators and/or tenants if a reporting obligation were imposed? Please identify any benefits, or potential costs or difficulties that might arise.*
Issue 17.3(c)	*If a reporting obligation is introduced, what matters should be included in the reports?*
Issue 17.3(d)	*How should any discrepancies in relation to maintenance and capital costs (as reported) be dealt with?*

17.4 FUNDING OF CAPITAL IMPROVEMENTS

Issue

The discussion paper raised the issue as to 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 time[195].

[195] Discussion Paper – page 33.

Objective

To provide a mechanism to allow for funding of capital improvements in a park.

Discussion

In response to the discussion paper, a number of tenants and their representatives expressed the view that park operators should meet all maintenance and capital expenditure obligations within the budget allocation from annual rentals. Some argued that park operators should fund capital improvements, as these improvements increase the value of the park operator's asset. However, some tenant respondents did acknowledge that in some instances mechanisms, such as payment of a one-off levy, might be justified in order to fund higher cost projects that benefit the tenants in a park through increased amenity or a potential increase in the resale value of a tenant's home.

A number of park operators indicated that rent review mechanisms were not always sufficient to cover unforseen costs or major capital improvements and suggested mechanisms such as sinking funds or payment of a levy to fund a specific project. See part 15.3 of this paper for discussion on rent variation and unforseen costs.

The proposed New South Wales legislation includes a mechanism whereby the home owners in a community may, by special resolution[196], 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 levy[197]. 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.

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. It is presumed that most parks currently set aside a proportion of rental to fund capital replacement and development, this option would simply formalise this practice.

[196] 75% of all home owners.
[197] *Residential (Land Lease) Communities Act 2013* (NSW) – sections 50 and 51.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**	• 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.	• 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**	• Allows park operators and tenants to agree on improvements required and provides for a mechanism to fund the improvements.	• Tenants may be required to pay a levy for improvements they do not agree to. • Increased costs for tenants. • Could result in an increase in the number of applications to the SAT.
Option C – **provide for the establishment of reserve funds by park operators**	• 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.	• 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.

Issues for consideration	
Issue 17.4(a)	*Which option do you prefer? Why?*
Issue 17.4(b)	*Can you think of any other ways to address this issue?*
Issue 17.4(c)	*What would be the likely impact on park operators and/or tenants of the options? Please identify any benefits, or potential costs or difficulties that you believe might arise.*
Issue 17.4(d)	*If option B or C were introduced, should the changes apply to all parks, including mixed use parks? Please give reasons for your answer.*

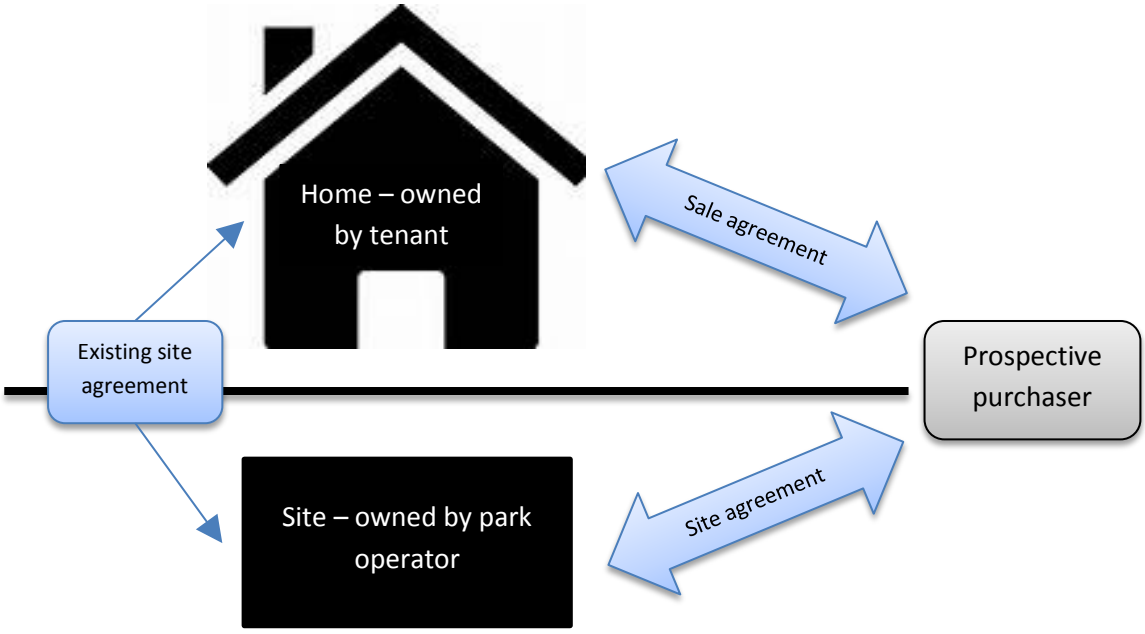
18 SALE OF HOMES ON-SITE

In many instances a home owner in a residential park may wish to sell a home while it is located in the park, particularly manufactured homes which are more difficult to move. Purchasers of these homes will often wish to move into the home in its current location and take the home owner's place as a resident in the park.

A key factor when considering this issue 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.

In some instances the tenancy rights may be assigned to the purchaser, which means that the purchaser effectively 'steps into the shoes' of the home owner and takes on all their rights and responsibilities under the existing site agreement. In other cases, the site agreement that is in place will end and the park operator and the purchaser of the home will enter into a new site agreement. In either case, the incoming purchaser is required to deal with two parties:

- the outgoing home owner – in relation to the purchase of the home; and
- the park operator – in relation to the ongoing tenancy arrangements that need to be put in place.



A number of issues arise in relation to the sale of homes on-site and the assignment or creation of new tenancy rights in relation to the purchaser.

18.1 THE RIGHT TO SELL THE HOME WHILE IT IS SITUATED AT THE PARK

Issue

As the owner of the home, a home owner has a clear 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 difficulties. For park operators, concerns sometimes arise in relation to access to a park by potential purchasers.

Objective

To make clear the right of a home owner to sell a home while it is located on-site in a park.

Discussion

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 prohibited[198].

Legislation in a number of other jurisdictions simply provides that a home owner has a right to sell the home on-site, and this right cannot be excluded by agreement[199].

The survey undertaken as part of the consultation process asked whether a tenant should always have the right to sell their dwelling on-site, provided they first notify the park operator. The responses to the survey indicate that the majority of respondents, both tenants and park operators, were of the view that tenants should have the right to sell their homes on-site. 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.

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 restrictions regarding display of 'for sale' signs (for example, size and location).

[198] RPLT Act – section 55.

[199] *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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**	• The park operator retains control of the process.	• 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**	• Provides certainty to tenants in regarding their to right to sell their home.	• The park operator loses some control over the process.

Issues for consideration	
Issue 18.1(a)	*Do you support the proposal that tenants be granted the right to sell a relocatable home on site? Why or why not?*
Issue 18.1(b)	*What do you consider to be reasonable restrictions in relation to the placing of a for sale sign?*

18.2 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 facilities[200]. 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.

Discussion

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 tenant[201]. 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

[200] RPLT Act – section 56.
[201] *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.

The *Residential Parks Act 1998* (NSW) sets out additional factors for which park operators can be considered to have interfered with a resident's right to sell a home, including the making of false or misleading statements about the community.

Proposed change

It is proposed that the RPLT Act be amended 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.

Issues for consideration	
Issue 18.2(a)	*Do you support the RPLT Act being amended to provide that a park operator must not interfere with or hinder the sale of a home by a tenant? Why?*
Issue 18.2(b)	*What types of behaviour by a park operator would you consider to be 'interfering with or hindering' in relation to the sale of a park home?*

18.3 USEFUL LIFE OF A PARK HOME

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 price[202]. 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.

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.

Issues for consideration	
Issue 18.3(a)	*Who should be required to advise the purchaser of the date of manufacture of a park home – the park operator or the seller? Are there any difficulties in identifying the date of manufacture?*
Issue 18.3(b)	*How could a requirement to notify a purchaser of the manufacture date of a home be implemented? For example, should the date of manufacture be included in disclosure documents or the contract for sale or both?*
Issue 18.3(c)	*Should any other information be provided to a potential purchaser about the home at the time of sale? For example, should the useful life of a home and any likely maintenance requirements be disclosed?*

[202] EISC report – page 339.

18.4 EXTENT OF PARK OPERATOR INVOLVEMENT IN THE SALE PROCESS

Issue

While the home owner has a right to sell their home (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)[203]. 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.

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.

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.

Discussion

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 lease[204]. 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 buyer[205].

The discussion paper asked whether the RPLT Act should require a tenant, as a condition of the sale of their dwelling, to obtain the written consent of the park operator to transfer the lease agreement and also provide the purchaser with a copy of the tenancy agreement[206]. The majority of responses to the discussion paper on this issue supported these proposals.

Respondents to the discussion paper outlined the following benefits in relation to the increased involvement of park operators:

- the operator can undertake a screening process to ensure that a prospective purchaser meets any relevant criteria for residency in a park (for example age restrictions), which is of benefit to other residents in the park as well as the park operator;
- the operator can make full disclosure and ensure that the purchaser is aware of their obligations under any proposed long-stay agreement;

[203] RPLT Act – section 55.
[204] EISC report – pages 339 – 340.
[205] EISC report – page 341.
[206] Discussion Paper – page 30.

- the potential for a purchaser to rely on any misrepresentations made by the outgoing tenant (seller) is limited;
- the risk that a home in deteriorating condition is sold, if it is likely that the park operator would require its removal in the near future (see also discussion at part 18.3 about the useful life of a park home) is limited; and
- the risk that an incoming tenant is left with a stranded asset, where they have purchased a home, but are not able to secure the tenancy rights in relation to the site is reduced.

Some respondents noted that the lease agreement that is likely to be offered to a new tenant might be different to that currently in place for the seller. The park operator would therefore be in the best position to ensure that a purchaser is provided with the correct document.

Consideration needs to be given to determining at what point a park operator should become involved in the sale process with a genuine buyer.

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 (see part 18.5 for discussion in relation to assignment).

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 into[207].

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 assigned, including the same information about the proposed incoming tenant that the resident was required to provide when applying for the tenancy[208].

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)[209]. Following successful negotiation in relation to the sale of the home the home owner must then give the park operator a written request for consent to the assignment, together a 'form of assignment' signed by both the seller and the buyer. The assignment is not effective until signed by the park operator[210].

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).

[207] *Residential (Land Lease) Communities Act 2013* (NSW) – section 108.
[208] *Caravan Parks Act 2012* (NT) – section 92.
[209] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – section 45.
[210] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – sections 47-49.

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.

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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**	• The parties are free to agree to the procedures surrounding sale of a home.	• 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.

	Potential benefits	Potential disadvantages
Option B – **require home owner to notify park operator of purchaser details and require park operator to provide information**	• 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 sale contract.	• 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**	• 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.	• 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).

Issues for consideration	
Issue 18.4(a)	*Which option do you prefer? Why?*
Issue 18.4(b)	*Can you think of any other ways to address this issue (including a combination of elements from the options outlined above)?*
Issue 18.4(c)	*What would be the costs implications of the different options? Please include quantifiable information if possible.*
***Issue 18.4*(d)**	*In relation to option B – what sort of information should the home owner be required to provide to the park operator?*

18.5 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 tenant takes on the rights and obligations of the outgoing tenant under the existing lease for the balance of the lease term, the agreement continues on the same terms and conditions; or
- entry into a new lease agreement – the original agreement terminates and the incoming tenant enters into a new agreement with the park operator. The terms and conditions may be different to those under the original 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 consent[211].

It appears that most long-stay agreements provide that a home owner may not assign their interest under the tenancy agreement, with park operators preferring to enter into a new agreement with the incoming tenant. This means that a purchaser of a home 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 purchasers.

However, any inability to secure tenancy rights for prospective purchasers would significantly impede the capacity of a home owner to sell and maximise the return from their asset.

Objective

To provide a mechanism for ensuring that purchasers can obtain tenancy rights on reasonable conditions, while ensuring that park operators retain an adequate level of control over the process.

Discussion

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 withheld[212]. These provisions apply in relation to both fixed term and periodic agreements.

The New South Wales Act also provides that if a 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
- 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) [213].

In other jurisdictions it is open for a purchaser to negotiate with the operator to enter into a new agreement rather than an assignment of the current home owner's tenancy rights.

Option A – Status quo

No legislative change. No right to assignment or grant of a new lease is included in the RPLT Act.

[211] RPLT Act – Schedule 1 – clause 16.
[212] *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.
[213] *Residential (Land Lease) Communities Act 2013* (NSW) – section 109.

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 agreement[214]. 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.

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.

[214] See *Residential (Land Lease) Communities Act 2013* (NSW) – section 107(4) for examples.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**	• The park operator retains flexibility in relation to the leasing arrangements they enter into and retains control over those who may enter the park.	• Potential for new long-stay agreements to include more onerous provisions. • Leases generally do not allow for assignment.
Option B – **tenant may assign rights to purchaser**	• Provides greater certainty for the outgoing tenant 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.	• 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**	• Provides greater certainty for the outgoing tenant and 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.	• 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 prospective purchaser. • May increase the regulatory burden on park operators by requiring that new leases be prepared.
Option D – **tenant may assign rights to purchaser, but purchaser has option to request new lease**	• Provides greater certainty for the outgoing tenant and incoming tenant in that the park operator is reasonably required to offer an assignment or new agreement. • Gives tenant the option of seeking the agreement that best suits their needs (either an assignment or a new agreement).	• 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.

Issues for consideration	
Issue 18.5(a)	*Which option do you prefer? Why?*
Issue 18.5(b)	*Can you think of any other ways to address this issue (including a combination of elements from the options outlined above)?*
Issue 18.5(c)	*What would be the costs implications of the different options? Please include quantifiable information if possible.*
Issue 18.5(d)	*What do you consider to be examples of reasonable grounds for a park operator to refuse to consent to an assignment or to enter into a new lease? For example, where the park operator considers that the purchaser would not be suitable for the park.*

18.6 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 operator[215]. 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 account[216].

Issue

Some long-stay agreements provide that the park operator must be appointed as the sole selling agent in relation to the sale of a home on-site. Some concerns have been raised in relation to this practice.

Objective

To provide for openness and transparency in relation to the appointment of a selling agent for the sale of a home.

Discussion

Tenants and their representatives have stated that allowing the park operator to be the sole selling agent could be viewed as anti-competitive and could result in unreasonable commissions and a lack of transparency. Tenant representative groups have also expressed concern about the potential conflict of interest in allowing the park operator to be the selling agent. They state that in the scenario where a park operator is selling a new park home and has a number of occupied homes for sale, the park operator may attempt to sell the new home first as they would continue to generate an income while the occupied homes are on the market.

However, there can also be benefits in appointing the park operator as the selling agent. Operators are well placed to disclose all relevant details about the park and park living to a potential purchaser and will be able to assess the suitability of a purchaser at an early stage in the sale process.

[215] RPLT Act - section 57.
[216] RPLT Act - section 58.

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

> *"consumers are able to enter into contracts for the purchase of a caravan or park home with third parties before they receive proper advice on tenancy arrangements from the owner/manager of the park within which the caravan park or park home is located ... the purchaser can incorrectly assume (or is incorrectly advised by the seller) that existing tenancy rights are provided."*[217]

Legislation in some jurisdictions specifically provides that a home owner cannot be required to appoint the park operator as selling agent[218].

Option A – Status quo

No legislative change. A provision may be included in a long-stay agreement requiring the home owner to appoint 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, a park operator would be prohibited from requiring a home owner to appoint them as the selling agent. Home owners would still have the option of appointing the park operator if they choose to do so.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**	• As selling agent the park operator retains control over selling process allowing park operator to approve a purchaser and provide adequate disclosure.	• 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. • Could result in unreasonable commissions being paid to operators. • 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.

[217] Submission No. 65 from Caravan Industry Association of Western Australia, to EISC Inquiry 2009.
[218] *Residential (Land Lease) Communities Act 2013* (NSW) – section 112; *Residential Tenancies Act 1997* (Vic) – section 206ZZH.

	Potential benefits	Potential disadvantages
Option B – **tenant cannot be required to appoint park operator as selling agent**	• More open and transparent process for home owners – gives home owners choice as to who to appoint as selling agent.	• Limits ability of park operators to become involved in process, may increase the risk that information not disclosed to purchaser.

Issues for consideration	
Issue 18.6(a)	*Which option do you prefer? Why?*
Issue 18.6(b)	*Can you think of any other ways to address this issue (including a combination of elements from the options outlined above)?*
Issue 18.6(c)	*What would be the costs implications of the different options? Please include quantifiable information if possible.*

18.7 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 agreement[219].

The discussion paper raised the question as to what fees should be payable when the park operator acts as selling agent[220].

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.

[219] RPLT Act – section 57.
[220] Discussion Paper – page 30.

Discussion

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 agreement[221]. The Victorian Act requires that the commission must be disclosed in the site agreement[222]. 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% of the sale price; or
- if the sale price of the manufactured home is more than $18,000—$900 plus 2.5% of the part of the sale price over $18,000[223].

Responses to the discussion paper on this issue were varied, including:

- park operators should only be able to recover a nominal fee that is set in the legislation– for example $500;
- park operators should only be able to recover actual administration and advertising costs incurred in arranging the sale;
- the commission should be a percentage agreed by the parties (either specified in the long-stay agreement or in the selling agency agreement);
- the commission should be a specified percentage – for example 5%; and
- the fees should be negotiated by the parties.

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 parts 16.5 and 18.8 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.

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.

[221] *Residential (Land Lease) Communities Act 2013* (NSW) – section 113.
[222] *Residential Tenancies Act 1997* (Vic) – sections 198, 183, 206ZZH and 206S.
[223] *Manufactured Homes (Residential Parks) Act 2003* (Qld) – sections 59- 62; *Manufactured Homes (Residential Parks) Regulation 2003* (Qld) – regulation 3.

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%, 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.

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**	• 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.	• Home owner may have limited bargaining power in relation to negotiations over fees. • Risk that there might be a duplication of fees if exit fees and other fees also payable.
Option B – **Selling agency fees to be specified in the long-stay agreement**	• 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.	• 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). • Risk that there might be a duplication of fees if exit fees and other fees also payable.

	Potential benefits	Potential disadvantages
Option C - **Selling agency fees limited to a specified percentage**	• 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.	• 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. • Risk that there might be a duplication of fees if exit fees and other fees also payable.
Option D - **Selling agency fees limited to a specified amount**	• 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.	• 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. • Risk that there might be a duplication of fees if exit fees and other fees also payable.

Issues for consideration	
Issue 18.7(a)	*Which option do you prefer? Why?*
Issue 18.7(b)	*Do you support the principle that the selling agency fee should be charged on a cost recovery basis – so that the fee accurately reflects the work involved in relation to a sale? Please give reasons for your answer.*
Issue 18.7(c)	*Can you think of any other ways to address this issue (including a combination of elements from the options outlined above)?*
Issue 18.7(d)	*What would be the costs implications of the different options? Please include quantifiable information if possible.*
Issue 18.7(e)	*If option C is implemented – what would be an appropriate percentage?*

18.8 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' or 'agency fees'. These fees should be distinguished from exit fees (see part 16.5 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 purchaser[224].

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.

Discussion

In response to the discussion paper, park operators indicated 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.

Some tenants were of the view that no additional costs should be payable. However, other tenant respondents did accept that a park operator should be able to recover reasonable costs incurred in relation to the administrative work undertaken in relation to a sale.

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. (see part 16.1 for discussion in relation to costs recovery principle in relation to fees).

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**	• Maintains flexibility for the parties to agree to fees payable.	• Risk that home owners or purchasers may be required to pay onerous fees.

[224] RPLT Regulations – regulation 10 and schedule 8.

	Potential benefits	Potential disadvantages
Option B – **Administration fees permitted but limited to recovery of reasonable costs**	• More transparency and certainty about administration fees. • Allows park operators to recover reasonable costs.	• May result in an increase in the number of applications to the SAT.

Issues for consideration	
Issue 18.8(a)	*Which option do you prefer? Why?*
Issue 18.8(b)	*Can you think of any other ways to address this issue (including a combination of elements from the options outlined above)?*
Issue 18.8(c)	*What would be the costs implications of the different options? Please include quantifiable information if possible.*

19 PARK OPERATOR CONDUCT PROVISIONS

Issue

Whether the RPLT Act and Australian Consumer Law (ACL) adequately address issues arising as a result of inappropriate conduct by park operators.

Objectives

To clearly set standards of behaviour for park operators and tenants and provide for adequate remedies between the parties if a breach of these standards occurs.

Discussion

Park operator conduct was not included as a key issue in the discussion paper, however a number of respondents did raise concerns in relation to this issue.

While the majority of park operators treat residents fairly and comply with their legal obligations, a number of 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 revealed 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.

The Australian Consumer Law (ACL), which applies in all Australian jurisdictions[225], includes 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[226], unconscionable conduct[227], harassment or coercion[228] or make false or misleading representations[229]. A broad range of remedies are available to the courts for breach of these requirements, including the power to make orders for damages, compensation, varying a contract or declaring a contact void (in whole or part). The ACL also includes mechanisms by which unfair contract terms in standard contracts may be declared void[230].

The requirements of the ACL are applicable in relation to long-stay agreements in residential parks and are enforceable through the courts. The SAT 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.

In some other jurisdictions the residential parks legislation specifically includes requirements, consistent with ACL provisions, in relation to the conduct of park operators.

[225] In Western Australia the ACL is implemented by the *Fair Trading Act 2010* (WA) and the *Competition and Consumer Act 2010* (Cth).
[226] ACL – section 18.
[227] ACL – section 20.
[228] ACL – section 50.
[229] ACL – section 30.
[230] ACL – part 2-3.

Some respondents to the discussion paper suggested that specific prohibitions on conduct such as unconscionable conduct, harassment and coercion and misleading and deceptive conduct should be included in the RPLT Act.

By including conduct provision in the RPLT Act, there would be some duplication of ACL requirements. However, a benefit of including provisions about standards of conduct in the RPLT Act itself is that the SAT would have jurisdiction to consider all matters arising under a long-stay agreement, including matters concerning the conduct of the parties.

The SAT is considered a more accessible dispute resolution forum than court, due to lower costs and its less formal processes. It may also be necessary to broaden the range of remedies available in the SAT, for consistency with the remedies available under the ACL (see part 20 for further discussion on the powers and operations of the SAT).

Proposed changes

It is proposed that, when determining a dispute under the RPLT Act, the SAT be given the jurisdiction to consider the conduct of park operators and whether it breaches the standards set by the ACL.

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.

This proposed change will ensure that the SAT has 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.

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.

Issues for consideration	
Issue 19(a)	*Do you support the proposal to give the SAT the jurisdiction to consider the conduct of a park operator? Why?*
Issue 19(b)	*What would be the likely impact on park operators and/or tenants of implementing this proposal? Please identify any benefits, or potential costs or difficulties that might arise.*

20 DISPUTE RESOLUTION

The SAT has the jurisdiction to resolve disputes that arise under the RPLT 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 appropriate[231].

The SAT is not a court and operates in a less formal manner. It is not bound by the rules of evidence and is required to act according to equity, good conscience and the substantial merits of a case, without regard to technicalities and legal forms[232]. The SAT registry is located in Perth and it has no regional registries. There are no regular circuits to regional centres, but members do travel to metropolitan or regional locations on a case-by-case basis. The SAT utilises telephone or video links and accepts filing of documents by mail, facsimile or electronically in order to facilitate access to persons in regional locations[233].

Parties to an application before the SAT will often participate in mediation, in an attempt to resolve a matter without the need for a hearing.

The Department also provides free conciliation services in relation to residential parks disputes as well as undertaking compliance functions.

20.1 WHO SHOULD HAVE JURISDICTION?

The discussion paper asked whether the SAT is the appropriate body for resolution of disputes in relation to long-stay agreements[234].

The majority of respondents, both park operators and tenants, supported the retention of the SAT as the dispute resolution body. A number of respondents stated that the SAT has the relevant legal knowledge and expertise to deal with issues under the RPLT Act. Independence of the decision maker was a key issue for a number of respondents.

A small number of respondents raised concerns associated with accessing SAT's services in regional areas and the fees for making an application. However, a number of respondents noted that using the SAT was a cost effective option, particularly given that the SAT waives fees for pensioners and health care card holders and will waive fees in some instances on the grounds of financial hardship[235].

Given the support for the retention of the SAT as the dispute resolution body, the Department does not consider it appropriate to further consider a transfer of jurisdiction to another body. However, consideration will be given to how the powers and operations of the SAT might be improved in relation to residential parks disputes.

[231] RPLT Act – section 62.
[232] *State Administrative Tribunal Act 2004* – section 32.
[233] *Australian Super-Tribunals – Similarities and Differences* – Justice John Chaney – 14 June 2013.
[234] Discussion Paper – page 31.
[235] 100% waiver of fees applies for pensioners and 50% waiver of fees applies in relation to health care card holders.

20.2 POWERS OF THE SAT

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.

Discussion

The powers of the SAT are set out in the RPLT Act and the *State Administrative Tribunal Act 2004* (SAT Act).

Currently under the RPLT Act, when making a decision in relation to a residential parks matter, the SAT may do any of the following:

- restrain any action in breach of a long-stay agreement;
- require any action in performance of a long-stay agreement;
- revoke or alter a park rule, or give directions modifying the operation of a park rule in relation to a long-stay tenant;
- order the payment of any amount payable under a long-stay agreement;
- order the payment of compensation to a long-stay tenant or prospective long-stay tenant for loss arising from a failure of the park operator to comply with section 11(1) (disclosure requirements);
- order the repayment to a party to a long-stay agreement of an amount paid by the party to the other party under a mistake of law or fact;
- order the payment of compensation for loss or injury (except personal injury) caused by a breach of the agreement or by breach of an order of the tribunal or a court;
- determine the amount of rent payable under a long-stay agreement, having regard to the terms of the agreement;
- authorise the payment to the tribunal of an amount of rent payable under the agreement until the agreement has been complied with, or an application for compensation has been determined;
- order that rent paid to the tribunal is to be paid out, towards the cost of remedying a breach of the agreement, or towards the amount of any compensation, or otherwise as the tribunal considers appropriate; and
- make such other orders as the tribunal considers appropriate[236].

[236] RPLT Act – section 62.

The SAT also has the power under the RPLT Act to:

- make an order for reduction in rent in certain circumstances[237];
- make a declaration that premises have been abandoned[238];
- determine the compensation payable for relocation costs on termination of a fixed term agreement[239] or to a landlord for loss resulting from a tenant's failure to give vacant possession[240];
- make orders terminating an agreement and requiring a tenant to give vacant possession[241]; and
- make orders relating to abandoned goods.[242]

The SAT Act provides that the SAT may grant an interim injunction if just and convenient to do so, may make declarations and may make any orders subject to conditions[243].

The powers of the SAT under the RPLT Act are largely consistent with the powers vested in tribunals in other jurisdictions. The legislation in South Australia and Victoria also includes a power for the relevant tribunal to declare invalid or vary a term of an agreement void if it is satisfied that the term is harsh or unconscionable[244].

Possible change

Consideration could be given to giving the SAT the specific power to make an order varying an agreement in appropriate circumstances.

If any changes to the jurisdiction of the SAT are made, the remedies available to the SAT may also need to be broadened to ensure that the SAT has the power to make all necessary orders in order to deal with the relevant issues.

Issues for consideration	
Issue 20.2(a)	*Does the SAT have adequate powers to make appropriate orders to resolve disputes? Please give reasons for your answer.*
Issue 20.2(b)	*Should the SAT be vested with a specific power to order the variation of a contract or to declare a provision of a contract void? If yes, should the power be limited in any way?*

[237] RPLT Act – section 63.
[238] RPLT Act - section 64.
[239] RPLT Act – section 65.
[240] RPLT Act - section 69.
[241] RPLT Act – sections 66 to 73.
[242] RPLT Act - sections 75 to 77.
[243] *State Administrative Tribunal Act 2004* – sections 90 to 91.
[244] *Residential Tenancies Act 1997* (Vic) – sections 144A and 206G; *Residential Parks Act 2007* (SA) – section 45.

21 PARK LIAISON COMMITTEES

Residing in a residential park involves communal living and often tenants live in a park for a long period of time. Consequently, issues can arise between tenants, or between tenants and the park operator and the park liaison committee (PLC) provides a forum in which to discuss and deal with these issues.

The RPLT Act currently provides that a park operator must take all reasonable steps to establish and maintain a PLC in parks with 20 or more long-stay sites[245]. 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[246].

While the number of, or selection method for, PLC representatives is not prescribed[247], 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.

The number of residential parks that have a PLC is currently unknown, although data on PLCs is being obtained through the Department's proactive compliance program.

Four per cent of all residential park tenancy complaints received by the Department since commencement of the RPLT Act involve PLCs. Key issues being

- that a PLC has not been established on a park;
- concerns about the PLC election process; and
- concerns about the operation of the PLC.

21.1 SHOULD PARK LIAISON COMMITTEES BE MANDATORY OR OPTIONAL?

Issue

In the discussion paper, respondents were asked whether PLCs should be mandatory or optional. The paper also asked whether respondents would support the introduction of a residents' committee in place of 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 and park level, to promote harmony and minimise disputes.

[245] RPLT Act - section 59.
[246] RPLT Act - section 61.
[247] Section 60(3) of the RPLT Act provides the Commissioner can make and publish guidelines regarding PLC procedures and the selection of tenant representatives on the PLC.

Discussion – Park Liaison Committees

In response to the survey question as to whether PLCs should be mandatory, almost 90% of tenants who answered this question supported mandatory PLCs, while only 25% of operators who responded to this question supported mandatory committees. Of the tenants who supported mandatory PLCs in the survey, most supported the committees being mandatory for all parks, regardless of the number of sites.

The following table provides a breakdown of unconditional responses in submissions regarding whether or not PLCs should be mandatory. In submissions, of all respondents who supported mandatory PLCs, only three respondents (all from a tenant perspective) supported mandatory PLCs for all parks.

Question: Should park liaison committees be mandatory?		
	YES (Number of submissions*)	**NO (Number of submissions*)**
Tenant perspective	13	5
Park operator perspective	2	9
Other	1	0
Total	16	14

* Submissions in which respondents gave an unconditional "yes" or "no" response.

Many of the comments made in support of PLCs highlighted the benefits of a PLC, particularly as a tool for communication and dispute management. Some respondents suggested that a well run committee required both the support of tenants and the good-will of management. Many supporters of PLCs suggested improvements, such as:

- dealing with park rules (this issue is dealt with in part 14); and
- specifying PLC procedures, particularly in the selection of tenant representatives.

Some respondents who supported mandatory PLCs acknowledged that requiring all parks to have a PLC would be difficult, especially in trying to maintain tenant representation on the committee and that parks with less than 20 long-stay sites would be small enough for tenants to communicate with an operator on an individual basis.

Many of the comments from tenants and park operators made in opposition to mandatory PLCs indicated that they did not want a committee, or that their PLC did not operate well.

PLCs are currently mandatory in New South Wales and in Queensland, however, they operate in very different ways. The current provisions of the *Residential Parks Act 1998* (NSW) regarding PLCs are similar to those in the RPLT Act. In NSW, PLCs are currently mandatory for parks with 20 or more long-stay sites, however it is also conditional on a majority of tenants requesting a PLC. NSW operators, like WA operators, are responsible to convene and maintain a PLC, and it is a defence to prosecution if an operator can demonstrate that reasonable steps have been taken to convene and maintain a PLC. However, the *Residential (Land Lease) Communities Act 2013* no longer provides 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.

Discussion – residents' committees

From the feedback to the discussion paper, it was evident that some respondents were unsure about the difference between a residents' committee and a PLC. The major difference between the two types of committees is that a PLC comprises representatives of both management and long-stay tenants, while a residents' committee is made up of long-stay tenant representatives only. There is no obligation under the RPLT Act to establish a residents' committee.

A residents' committee may consider a range of issues raised by long-stay tenants in a park and how best to deal with them. This may not always involve the park operator. Consequently, a park operator's time is used optimally in dealing only with those issues that the residents' committee deems to be appropriate to raise with the operator.

In the discussion paper, respondents were asked whether they would support the introduction of a residents' committee in place of a PLC. Of the nineteen submissions that included a response to this question, 11 respondents (mainly tenants) either supported a residents' committee in place of a PLC or supported both committees.

Those in support of a residents' committee suggested tenants might feel less constrained and more encouraged to participate in a committee without operator representatives and residents' committees could save time for operators if they deal with some matters exclusively. Eight respondents opposed a residents' committee, with tenants mainly preferring a mandatory PLC only. Operators mainly preferred not to have a committee at all.

Those opposed to a residents' committee suggested that such a committee could polarise management and tenants and both operators and tenants were familiar with a PLC.

Residents' committees are provided for in Victoria (for home owners), New South Wales (under the current and proposed law, applying to both renters and home owners), in Queensland (for home owners) and in South Australia (for both renters and home owners).

Common provisions from other jurisdictions about residents' committees include:

- recognising one residents' committee per park;
- a process to determine whether a committee will be established in a park (either by election or with the support of a minimum number of residents);
- placing the onus on the operator to provide facilities for the committee to function; and
- requiring that the operator does not unreasonably interfere with a residents' committee.

Currently, New South Wales provides that a residents' committee can operate as an alternative, or in addition to, a PLC.

However, in New South Wales, the proposed legislation, provides for an optional PLC (joint consultative committee)[248] while a residents' committee is in existence on the park.

Options

A mandatory PLC for all parks was not considered feasible following the feedback received about the difficulty in obtaining and maintaining representation in smaller parks and the relative ease in approaching an operator individually. However, it is proposed that options A and B both include an obligation on the park operator to respond to a proposal or complaint from an individual tenant within 21 days of receiving the proposal/complaint. This would facilitate discussions between an operator and tenant regardless whether a PLC or residents' committee is established on a park.

As tenants are always free to establish residents' committees, the options do not include their regulation.

Option A – Mandatory PLC for residential parks with 20 or more sites (No change)

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 therefore be required to hold an establishment meeting every 5 years, or whenever tenants can demonstrate that 30% of tenants want a meeting, to consider whether the majority of 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.

[248] Residential (Land Lease) Communities Act 2013 (NSW) – section 101(4).

Impact analysis

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

	Potential benefits	Potential disadvantages
Option A – **no change**	• The parties are familiar with the status quo.	• There may be disputes about the establishment of a PLC, particularly if more than one is created on a park. • There may be disputes about the selection of tenant representatives. • The PLC may not be consulted about changes to park rules. • 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**	• The parties are familiar with the PLC process. • Having a regulated process for the establishment of a PLC and selection of tenant representatives may reduce disputes. • Changes to park rules will be required to be discussed by the PLC. • 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.	• Parties will need to familiarise themselves with the new requirements. • Operators would need to organise an establishment meeting once or periodically, depending whether the park adopts a PLC, which takes time out from dealing with other park business.

Preliminary assessment

As there is a case to discount option A, the Department prefers option B.

Issues for consideration	
Issue 21(a)	*Which option do you prefer and why?* *Are there elements of your preferred option that you oppose? Why?*

Issues for consideration	
Issue 21(b)	*If you prefer option B:*
(i)	*Should the law specifically provide for how many tenants can be on the PLC? (Should this be a maximum number, a percentage of the number of sites in the park or some other method?)*
(ii)	*Should the nomination and selection of tenant representatives on a PLC take place at an establishment meeting or in a separate process? If a separate process,* • *should only those tenants selected by a majority of interested tenants be put forward for nomination?* • *should an election process be mandatory where more than one tenant nomination is received?* • *how would such a process be co-ordinated?*
Issue 21(c)	*Should there be specific types of tenant representatives in a mixed-use park?* *For example, at least one representative of renters, at least one representative of mobile home owners and at least one representative of park home owners? Why or why not?*
Issue 21(d)	*Apart from your preferred option, are there other options that could be considered? Please provide reasons for your views.*

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