

**SUBMISSION TO THE DEPARTMENT OF
COMMERCE**

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

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Contact:

**Chantal Roberts
Executive Officer
Shelter WA**

eo@shelterwa.org.au

08 9325 6660

Executive Summary

Shelter WA welcomes the opportunity to provide a submission in response to the Report of the *Statutory Review of the Residential Parks (Long-stay Tenants) Act 2006* (RPLT Act), and acknowledges the substantial research and consultation undertaken by the Department of Commerce (DoC) in the review process.

Based on Shelter WA's research and feedback received from park residents, Shelter WA supports changes to the RPLT Act that address:

- Inclusion of renters of site and dwellings (in addition to owner-renters) under the RPLT Act;
- Greater security of tenure for residents, including providing adequate notice if a fixed term lease will not be renewed;
- Improved disclosure requirements to ensure prospective tenants are provided with necessary information to make a fully informed decision before entering into a lease;
- Requiring the method of rent review to be stipulated in lease agreements, similar to amendments of the *Residential Tenancies Act 1987* (RTA);
- Ensuring changes to the RPLT Act do not discourage park operators from offering fixed-term agreements; and
- Ensure tenants' rights are balanced against the need for park financial viability.

Introduction and basis for recommendations

As the peak body for social and affordable housing in Western Australia, Shelter WA recognises the importance of protecting existing affordable housing stock in WA, including caravans and park homes. Whilst some people may choose to live in this form of housing for lifestyle or locational reasons, caravan/residential parks (referred from here on as residential parks) are increasingly being used as an affordable housing option for low to moderate income earners and those on fixed incomes, such as seniors and people on a disability support pension. According to the 2011 Census, 1,237 people in WA were marginally housed in caravan parks, at risk of homelessness (ABS, 2012).¹ Shelter WA is concerned for seniors and others living in residential parks in WA, many of whom have limited housing options.

This submission has been informed by consultations undertaken with caravan park residents, as well as from an understanding of the affordable housing system in WA. Over the course of the review process, Shelter WA's engagement included a community consultation forum, co-hosted with Tenancy WA, which included park owners, residents and tenant advocates, and a focus group with current and former park residents. In early 2016, Shelter WA commenced a research project on the housing needs and preferences of caravan park residents in the Perth metropolitan region. Stakeholder views from that project were also incorporated into Shelter WA's response to the Review of the RPLT Act.

¹ People living in caravan parks are classified as being marginally housed by the ABS if the caravan park is their main home, none of the household residents are working full-time, the dwelling was being rented for less than a threshold amount, the landlord was not reported as an employer, the dwelling had less than three bedrooms, and the combined household income was below a certain amount.

Shelter WA was founded in 1979 as an independent community based peak body committed to accessible, affordable and secure housing for Western Australians. Shelter WA focuses on promoting the development of appropriate affordable housing options for low to moderate income earners, those who are otherwise disadvantaged in the housing market and people experiencing homelessness.

Shelter WA Recommendations

6.1 Renters of both site and dwelling (renters) – support option A

Shelter WA recommends that renters of sites and dwellings should continue to be covered by the RPLT Act. The RTA is not appropriate legislation for residential park leases, and the use of the RTA could lead to confusion and added complexity for renters and park operators.

7.1 Rolling short term contracts – support option B

Shelter WA supports an amendment of the RPLT Act that will ensure rolling short term contracts cannot be used for residents intending to reside at a residential park for non-holiday purposes, with a number of exceptions stipulated on page 33 of the Report.

7.2 Contracting out – support option B

Shelter WA supports an amendment to the RPLT Act to prohibit any form of contracting out of the Act, including the standard terms and the requirement that park operators bear the costs of preparing the long-stay agreement.

8.0 Park rules – support option B

Shelter WA supports the inclusion of specific provisions in the RPLT Act about the nature, enforcement and amendment of park rules. Park rules are a key factor in the successful operation of a residential park. Ensuring that rules are fair and enforced consistently is critical to ensuring a park is managed effectively. Shelter WA agrees that park rules affecting health and safety, licencing, and other legal requirements should be exempt from consultation requirements.

9.1 What information should be provided to a tenant? – support option B

Shelter WA supports option B to strengthen the RPLT Act and regulations to improve disclosure. Long-stay tenants must be given adequate information about the agreement that they enter into with park operators. Tenants can suffer significant financial losses if misinformation is provided on tenants' rights and responsibilities under their lease agreement. Shelter WA is supportive of all additional disclosure requirements outlined on page 58 of the Report.

Tenants should also be provided with contact details for relevant services in their area i.e. translating and interpreting, tenant advocates.

9.2 When should disclosure be required? – support option B

Shelter WA supports a minimum timeframe of at least seven days for prospective tenants to be given disclosure information for a long-stay agreement. This will ensure tenants are provided with adequate time to make an informed decision before they sign a long stay agreement, reducing the risk of disputes.

9.3 Ongoing disclosure – support option B

Shelter WA supports the inclusion of ongoing disclosure requirements. Park operators should 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. Ongoing disclosure requirements should include changes to zoning or permitted use, changes to conditions on a park operator's licence and commencement of action by a mortgagee in relation to the park or any form of insolvency.

It should also include any arrangement for the sale of land, or part thereof, that impacts on tenants' use or occupation, including common use areas.

9.4 Consequences of inadequate disclosure – support option B

Shelter WA supports strengthening consequences of inadequate disclosure. Remedies to address insufficient disclosure should include amendments providing that certain lease provisions, particularly those that impose obligations or restrictions on tenants (i.e. visitors' fees) are not enforceable unless clearly disclosed prior to entry into the contract. Shelter WA also supports strengthening the power of the State Administrative Tribunal (SAT) to address inadequate disclosure. This will ensure tenants are provided critical information that may affect their tenancy.

10.1 Mandating minimum lease periods

Caravan park residents engaged with Shelter WA said that security of tenure was one of their primary concerns (the other was affordability and rent increases). Provisions to provide park residents, many of whom are seniors, with greater security of tenure is necessary. However, it is important that provisions to protect tenants do not result in owners utilising short term or periodic leases in order to avoid minimum lease periods.

Among residents with whom Shelter WA consulted in the preparation of this submission, some had fixed term leases, others had periodic leases, while another cohort did not know what kind of lease they had. A former park resident told Shelter WA, 'I feel that periodic leases really are not suitable for permanent tenants and hope that this form of lease would be legally prohibited'. Another resident said, 'It's always a concern that we are on a periodic lease, but feel that a longer lease will never happen for residents of [park name withheld]'.

10.2 Termination of tenancy without grounds – support option C

Shelter WA supports the repeal of 'without grounds' terminations from the Act, but suggests additional grounds to terminate a periodic tenancy should be included, such as those listed on p.76 of the Report.

10.3 Termination of tenancy on the sale of the park (where vacant possession is required) – support option A

Shelter WA supports maintaining the status quo in relation to allowing the termination of a fixed-term agreement when a park is sold and used for a different purpose. However, residents must receive adequate compensation to cover the costs incurred in securing new accommodation and they must be given significant advance notice prior to termination of the lease. The proposed change, which would remove the ability for park operators to terminate leases when a park is sold, may adversely affect park residents by compromising the financial viability of residential parks. The proposed change may also cause operators to cease to offer fixed-term tenancies in favour of periodic tenancies.

10.4 Impact of park owner insolvency – mortgagee possession – support option B

Shelter WA supports option B to provide greater protection for tenants, and to be consistent with the Retirement Village Act. Shelter WA originally supported option A in a previous submission to the RPTL Review, however it is clear that option B will provide greater certainty to tenants that their occupation will be unaffected by a mortgagee taking possession of the park.

10.5 Recognition of a tenant – support option B

Shelter WA supports including the provision for an individual to apply to the SAT for an order to be recognised as a tenant, such as for a relative or de facto partner. This is consistent with the RTA.

11.1 Determining compensation – fixed term tenancies – support option C

Shelter WA is generally supportive of amendments that will give the SAT adequate powers to consider relevant factors when determining appropriate compensation for fixed term tenancies.

11.3 Compensation at the end of a fixed term tenancy – support option C

Shelter WA recommends that amendments to the RPLT Act be consistent with the RTA, which requires a minimum notice period for a party to end a fixed term tenancy. Notice of 180 days should be given to residents when fixed term leases will not be renewed. This will give long-stay tenants an opportunity to plan for relocation or negotiate a new lease. New disclosure requirements should detail this requirement.

14.2 Method of varying rent – support option C

Increasing rents are a significant concern for park residents. One resident, living in a park located on Government owned land, told Shelter WA they were concerned about ‘increasing rents (now \$190 per week) when we actually own our homes, our argument being that the park land is not saleable, so how can the rents be calculated on increasing land value?’ She continued, ‘most of the people on the park are pension age, and this amount takes a good portion of the allowance, especially for a single person’.

Caravan park residents should be protected from excessive rent increases by similar provisions to those included in the RTA. The RTA stipulates the method of rent review must be specified in all agreements, but certain types of review, such as market reviews, are prohibited. Rent increases can be calculated on CPI, a set percentage increase, or an increase by a set amount.

14.3 Unforeseen costs – support option A

Park operators plan for increases in taxes, rates and utility costs and unexpected costs, as any business does. For this reason, Shelter WA supports option A to maintain the status quo. Rent increases for unforeseen costs should be prohibited under the RPLT Act.

15.1 Cost recovery in relation to fees – support option B

Shelter WA supports an amendment to the RPLT Act to allow for fees to be charged only through the cost recovery principle. This would increase transparency of fees for tenants, and ensure that tenants are not overcharged.

15.2 Costs of preparing a long-stay tenancy agreement – support option B

Shelter WA supports the proposed change to the RPLT Act to require park owners to bear the costs of preparing a long-stay agreement, and that this requirement cannot be varied by operators under the Act. This is consistent with the RTA.

15.3 Visitors' fees – support option C

Visitor fees should be negotiated prior to signing an agreement. Visitor fees should only be charged for instances where visitors are staying overnight for longer than three weeks and/or over an agreed number of times.

Shelter WA also recommends that visitor fees be waived where a tenant resides in a self-contained dwelling or where park facilities are not utilised by the visitor. Shelter WA proposes that live-in carers should be exempt from paying visitor fees.

15.5 Exit fees – support option B

Shelter WA supports the amendment of the RPLT Act to regulate shared equity agreements and the use of exit fees. Enhanced disclosure requirements, proposed in section 9.4, will ensure long-stay tenants are protected when a park operator fails to properly disclose the impact of exit fees at the beginning of the agreement.

17.1 The right to sell a home while it is situated on the park – support option B

Shelter WA supports the amendment of the RPLT Act to grant owner-renters the right to sell a home on-site. Owner-renters should be required to notify the park operator before offering the home for sale.

17.2 Interference in sale by park operator – support option B

Shelter WA supports a change to the RPLT Act that will ensure park operators cannot interfere with or hinder the sale of a park home by an owner-renter.

17.3 Useful life of a park home – support proposal

Shelter WA supports the development of a standard contract for the sale of a park home, including importantly the date of manufacture, which must be provided in the disclosure material and the sale contract, by the park operator and owner-renter respectively.

17.4 Extent of park operator involvement in the sale process – support option B

Shelter WA supports requiring owner-renters to inform park operators of details about a prospective purchaser and for the park operator to provide disclosure documents to the purchaser upon receiving this notification. This will ensure the purchaser is fully aware of their obligations under the lease.

17.5 Creation of tenancy rights for the purchaser – support option C

Shelter WA is supportive of a requirement for park operators to enter into a new site agreement with a purchaser of a park home. Park operators will still retain the ability to refuse to enter into an agreement if they have reasonable grounds to do so. The rent for this new site agreement should not exceed fair market value.



Conclusion

Shelter WA welcomes the opportunity to provide feedback on the Statutory Review of the *Residential Parks (Long-Stay Tenants) Act 2006*. Shelter WA provided recommendations that address greater security of tenure for residents, improved disclosure requirements, and greater transparency of rent calculations.

The proposed changes will lead to better protections for long-stay residents, many of whom are seniors on limited incomes. Careful consideration will be required for each of the proposed changes to ensure that increased protections for tenants do not contribute to park closures, further disadvantaging residents.