

Western Australia

Residential Parks (Long-stay Tenants) Act 2006

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Residential Parks (Long-stay Tenants) Act 2006

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Western Australia

Residential Parks (Long-stay Tenants) Act 2006

An Act to regulate the relationship between the operators of residential parks and tenants who live in such parks for extended periods, to consequentially amend certain other Acts, and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary matters

1. Short title

This is the *Residential Parks (Long-stay Tenants) Act 2006*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Glossary of terms used in this Act

The Glossary at the end of this Act defines or affects the meaning of some of the words and expressions used in this Act.

4. Crown bound

This Act binds the Crown.

5. Meaning of “long-stay agreement”

- (1) In this Act —

long-stay agreement means a residential park tenancy agreement —

- (a) for a fixed term of 3 months or longer; or
- (b) for a periodic tenancy that continues for 3 months or longer,

other than an agreement entered into for the purpose of —

- (c) conferring on an individual the right to occupy a site or other park premises in a residential park for a holiday; or
- (d) conferring on an employee or agent of a park operator the right to occupy a site or other park premises in the residential park during the term of the employment or agency.

- (2) For the purposes of subsection (1), a residential park tenancy agreement conferring a right to occupy a site or other park premises for a fixed term of 3 months or longer is taken, in the absence of proof to the contrary, not to have been entered into for the purpose of conferring a right to occupy the site or premises for a holiday.

6. Application of Act to long-stay agreements

- (1) This Act applies to, and in respect of, a long-stay agreement made after the commencement of this Act.
- (2) This Act applies to, and in respect of, an existing periodic long-stay agreement as if the agreement had been made immediately after the commencement of this Act.
- (3) This Act applies to, and in respect of, an existing fixed term long-stay agreement made orally —
 - (a) to the extent that it can be applied, as if the agreement had been made in accordance with this Act;
 - (b) until the agreement is terminated or replaced.
- (4) Subject to subsection (5), this Act does not apply to an existing fixed term long-stay agreement made in writing.
- (5) If an existing fixed term long-stay agreement made in writing is extended for a period commencing after the commencement of this Act, this Act applies to, and in respect of, the agreement as extended —
 - (a) to the extent that it can be applied, as if the agreement had been made in accordance with this Act;
 - (b) until the agreement is terminated or replaced.
- (6) This Act applies to a long-stay agreement except to the extent that this Act specifically provides otherwise despite the terms of any other residential tenancy agreement, other agreement, contract or arrangement, whether that agreement, contract or arrangement was made before or after the commencement of this section.

s. 7

- (7) In this section —

existing fixed term long-stay agreement means a long-stay agreement for a fixed term of 3 months or longer —

- (a) made before the commencement of this Act; and
- (b) that is continuing at the commencement of this Act;

existing periodic long-stay agreement means a long-stay agreement that continues for 3 months or longer —

- (a) made before the commencement of this Act; and
- (b) that is continuing at the commencement of this Act.

7. Application of Act to periodic long-stay agreements

- (1) At the end of the period of 3 months after a periodic long-stay agreement which is not in compliance with this Act was made —
 - (a) the park operator who made the agreement is to attempt to make with the tenant a long-stay agreement that is in compliance with this Act; and
 - (b) if such an agreement is not made within a period of 5 months after the periodic long-stay agreement was made then either party may apply to the State Administrative Tribunal for the termination of the long-stay agreement, or for a determination in respect of the terms of the agreement, at the discretion of the State Administrative Tribunal.
- (2) A park operator who does not take appropriate steps to attempt to make a long-stay agreement under subsection (1)(a) commits an offence.
Penalty: a fine of \$10 000.
- (3) From the end of the period of 3 months after a periodic long-stay agreement which was not made in compliance with this Act was made until the agreement is terminated or a new agreement is made under subsection (1)(a) this Act applies to and in respect of the long-stay agreement to the

extent that it can be applied, as if the agreement had been made in accordance with this Act.

- (4) In this section —

periodic long-stay agreement means a long-stay agreement for a periodic tenancy that continues for 3 months or longer.

8. Operation of this Act in relation to other written laws

- (1) If a residential tenancy agreement (as defined in the *Residential Tenancies Act 1987*) under which a person has a right to occupy a site in a residential park or other caravan park is a long-stay agreement, that Act does not apply to the agreement.
- (2) The *Retirement Villages Act 1992* does not apply to a lifestyle village (as defined in this Act) established for retired persons or predominantly for retired persons.
- (3) Except as otherwise provided by this Act, the provisions of this Act are in addition to, and do not derogate from, the provisions of any other written law.

9. Contracting out

- (1) Except as specifically provided by this Act —
 - (a) any contract, agreement, scheme or arrangement, whether it was made before or after the commencement of this Act, is void and of no effect to the extent that it purports to exclude, modify or restrict the operation of this Act; and
 - (b) any purported waiver of a right conferred by or under this Act is void and of no effect.
- (2) A person must not enter into any contract, agreement or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.

Penalty: a fine of \$10 000.

Part 2 — Long-stay agreement

Division 1 — General matters

10. Form of long-stay agreements

A long-stay agreement must —

- (a) be in writing;
- (b) include such clauses, if any, as are prescribed; and
- (c) make provision for such matters, if any, as are prescribed.

11. Information for prospective long-stay tenants

- (1) Before a park operator makes a long-stay agreement with a person the park operator must give the person the following —
 - (a) a copy of the proposed agreement, including an explanation of how and when the rent may be varied under the agreement;
 - (b) a copy of the information booklet prepared by the Commissioner for the purposes of this paragraph;
 - (c) a written schedule of fees and charges showing the nature and amount of all fees and charges currently payable by a long-stay tenant to the park operator before or at the time that the agreement is made or during the term of the agreement;
 - (d) a report in accordance with the regulations giving details of the condition of the proposed agreed premises and any structures or fixtures on or in those premises;
 - (e) a copy of the park rules;
 - (f) written information about the membership and functions of the park liaison committee (if any);

- (g) a copy of the prescribed information sheet completed by the park operator in accordance with the regulations;
 - (h) 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 while it is located on a site in the residential park;
 - (i) particulars of any restrictions or conditions imposed directly or indirectly under a written law that could affect any proposed assignment of the prospective tenant's rights under the proposed long-stay agreement;
 - (j) any other prescribed information.
- (2) A park operator who does not comply with subsection (1) commits an offence.
- Penalty: a fine of \$5 000.

12. Restrictions on charges payable by long-stay tenants

- (1) A park operator must not require or receive from a long-stay tenant, or prospective long-stay tenant, any payment of money for or in relation to entering into, renewing, extending or continuing the long-stay agreement except money for rent and a security bond.
- Penalty: a fine of \$5 000.
- (2) Subsection (1) does not apply to —
- (a) an amount paid or payable as consideration for an option to enter into a long-stay agreement if, when the option is exercised, the amount is refunded or applied towards the rent payable under the agreement;
 - (b) any amount that the park operator is authorised to require or receive under another provision of this Act; or
 - (c) any other payment of a prescribed class.
- (3) A real estate agent who provides services on behalf of a park operator in connection with letting agreed premises or entering into a long-stay agreement must not require or receive from a

long-stay tenant, or prospective long-stay tenant, any fee, charge or reward for those services.

Penalty: a fine of \$5 000.

- (4) A real estate agent who provides services on behalf of a long-stay tenant in connection with sub-letting the agreed premises must not require or receive from a sub-tenant, or prospective sub-tenant, any fee, charge or reward for those services.

Penalty: a fine of \$5 000.

- (5) A fee, charge or reward accepted in contravention of this section is recoverable by the person who paid it as a debt due in a court of competent jurisdiction.

13. Restriction on letting fees payable to real estate agent

- (1) A real estate agent who provides services on behalf of a park operator or a long-stay tenant in connection with letting or sub-letting agreed premises or entering into a long-stay agreement or a sub-tenancy agreement must not require or receive from a park operator or long-stay tenant any fee, charge or reward for those services except —

- (a) if no other amount is prescribed — a letting fee not exceeding 2 weeks' rent; or
- (b) if another amount is prescribed — the prescribed amount.

Penalty: a fine of \$5 000.

- (2) A fee, charge or reward accepted in contravention of this section is recoverable by the person who paid it as a debt due in a court of competent jurisdiction.

14. Cost of preparing long-stay agreement

The park operator must bear the cost of preparing a proposed long-stay agreement for execution by the parties to the agreement, unless the agreement expressly provides otherwise.

Penalty: a fine of \$5 000.

15. Disclosure of park operator's particulars to tenant

- (1) When a park operator enters into a long-stay agreement, the park operator must ensure that the long-stay tenant is given written notice of the following —
 - (a) the full name and address of the park operator and of any person having superior title to that of the park operator;
 - (b) if the park operator or person with superior title is a body corporate — the full name and business address of the secretary of the body corporate; and
 - (c) the terms of the park's operating licence and all licensing conditions including any conditions imposed by the relevant local government authority under the *Caravan Parks and Camping Grounds Act 1995*.

Penalty: a fine of \$5 000.

- (2) If a person succeeds another person as a park operator, the new park operator must ensure that each long-stay tenant in the residential park is given written notice of the following —
 - (a) the full name and address of the new park operator;
 - (b) if the new park operator is a body corporate — the full name and business address of the secretary of the body corporate.

Penalty: a fine of \$5 000.

- (3) If a name or address of which the park operator is required under this section to give notice to a long-stay tenant is changed, the park operator must within 14 days give the tenant written notice of the new name or address.

Penalty: a fine of \$5 000.

- (4) However, if a residential park is managed by a real estate agent, it is sufficient for a long-stay tenant to be notified of the address of the agent, instead of the address of the park operator.

16. Disclosure of tenant's particulars to park operator

- (1) A long-stay tenant or prospective long-stay tenant must not falsely state the tenant's name or place of occupation to the park operator.

Penalty: a fine of \$5 000.

- (2) If a long-stay tenant has given particulars of the tenant's place of occupation to the park operator and the place is changed, the tenant must notify the park operator of the new place of occupation within 14 days after the change.

Penalty: a fine of \$5 000.

- (3) When a long-stay tenant vacates the agreed premises, the tenant must give the park operator particulars of the tenant's next intended residential address or postal address.

Penalty: a fine of \$5 000.

17. Tenant's copy of long-stay agreement

- (1) When a long-stay tenant signs a long-stay agreement, the park operator must —

- (a) give the tenant a copy of the agreement; and
- (b) ensure that a fully executed copy of the agreement is given to the tenant within 21 days after it was first signed by the tenant or, if that is not practicable in the circumstances, as soon as practicable after that.

Penalty: a fine of \$5 000.

- (2) If the park operator does not execute the long-stay agreement but gives the long-stay tenant a copy of it in accordance with subsection (1)(b), acceptance of rent from the tenant by the park

operator gives the agreement the same effect as if it had been fully executed.

18. Cooling off period

- (1) A long-stay tenant under a site-only agreement is entitled to rescind the agreement —
 - (a) at any time within 5 working days after the date of the agreement; or
 - (b) if the park operator does not comply with section 11(1) within the time specified in that subsection but does provide the documents required under that section — at any time within 10 working days after the day on which the documents required under that section are given to the tenant.
- (2) A person is not entitled to rescind a long-stay agreement under this section after taking up occupation of the agreed premises.

19. Recovery of amounts paid under a mistake of law or fact

- (1) A party to a long-stay agreement is entitled to recover an amount paid to the other party under a mistake of law or fact relating to the agreement.
- (2) A long-stay tenant may recover an amount mistakenly paid to the park operator by deducting it from rent payable by the tenant under the long-stay agreement.

20. Children living on agreed premises

- (1) Except in the circumstances referred to in Schedule 1 clause 9(a) or (b), a person must not —
 - (a) refuse to make a long-stay agreement with an individual on the grounds that it is intended that a child will live on the agreed premises; or
 - (b) advertise, or otherwise indicate an intention, to refuse to make a long-stay agreement with an individual on those grounds.

- (2) Except in the circumstances referred to in Schedule 1 clause 9(a) or (b), a person must not instruct anyone else —
- (a) to refuse to make a long-stay agreement with an individual on the grounds that it is intended that a child will live on the agreed premises; or
 - (b) to advertise, or otherwise indicate an intention, to refuse to make a long-stay agreement with an individual on that ground.

Penalty: a fine of \$5 000.

Division 2 — Security bonds

21. Security bonds

- (1) A park operator must not require or receive payment of more than one security bond in respect of a long-stay agreement.
Penalty: a fine of \$5 000.
- (2) A park operator must not require or receive payment of a security bond if the amount of the bond is more than the sum of —
- (a) 4 weeks' rent;
 - (b) an amount of not more than \$100 by way of security for keys, remote control entry devices or other security devices provided by the park operator for the use of a tenant or, if another amount is prescribed for the purposes of this paragraph, the prescribed amount; and
 - (c) if the long-stay tenant is permitted to keep a cat or dog at the agreed premises — an amount to meet the cost of fumigating the premises at the end of the tenancy, if necessary, that is not more than \$100 or, if another amount is prescribed for the purposes of this paragraph, the prescribed amount.

Penalty: a fine of \$5 000.

- (3) When a long-stay tenant pays a security bond, the park operator must give the long-stay tenant a receipt that specifies —
- (a) the amount paid;
 - (b) the date on which it is paid;
 - (c) if a pet bond is paid — the amount of the pet bond;
 - (d) the name of the tenant; and
 - (e) particulars of the agreed premises for which it is paid.

Penalty: a fine of \$20 000.

22. Payment of bond to bond administrator or trust account

- (1) When a park operator receives a security bond, the park operator must, within 14 days, deposit an amount equal to the amount of the bond —
- (a) with the bond administrator or an authorised agent as defined in the *Residential Tenancies Act 1987* Schedule 1 clause 1; or
 - (b) into a separate ADI account held in the names of the park operator and the long-stay tenant and entitled “tenancy bond account”.

Penalty: a fine of \$20 000.

- (2) When a real estate agent receives a security bond as the agent of a park operator in relation to a long-stay agreement, the real estate agent must deposit an amount equal to the amount of the bond into —
- (a) an account in the name of the agent entitled “tenancy bond trust account”, used for the purpose of holding a security bond under this subsection or the *Residential Tenancies Act 1987* and for no other purpose; or
 - (b) a separate trust account entitled “tenancy bond trust account” that is maintained by the agent in accordance with the *Real Estate and Business Agents Act 1978* Part VI.

[Section 22 amended by No. 60 of 2011 s. 106.]

23. Keeping security bond records

- (1) A park operator must keep a record of —
- (a) the particulars specified in a receipt given to a long-stay tenant for a security bond; and
 - (b) if the security bond amount is deposited in a tenancy bond account — the name of the ADI or authorised financial institution with whom the account is held.

Penalty: a fine of \$20 000.

- (2) A park operator must give a copy of a record kept under subsection (1) to the long-stay tenant from whom the bond was received within 3 working days of receiving the bond.

Penalty: a fine of \$5 000.

- (3) A person must not make an entry in a record that the person knows is false or misleading in a material particular.

Penalty: a fine of \$5 000.

24. Increase in security bond

- (1) When the amount of rent payable under a long-stay agreement is increased, the park operator may increase the amount of the security bond payable by the long-stay tenant by giving the tenant a written notice specifying the amount of the increase and the day on which it is payable.
- (2) The day specified in the notice on which the bond is payable is to be at least 60 days after the day on which the notice is given.
- (3) A security bond cannot be increased to an amount that would exceed the sum of —
- (a) 4 weeks' rent under the long-stay agreement at the time at which the amount of the increase would be payable; and
 - (b) if a pet bond is payable — the maximum amount chargeable under section 21(2)(c).

- (4) A notice of increase of the amount of security bond that has been given in accordance with this section and that has not been withdrawn by the park operator varies the long-stay agreement to the effect that the amount of the increase specified in the notice is payable under the agreement on the day specified in the notice.
- (5) Sections 21(3), 22 and 23 apply to an amount paid under this section.

Division 3 — Rent

25. Rent in advance

- (1) A park operator must not require a long-stay tenant or prospective long-stay tenant to pay more than 2 weeks' rent before or during the first 2 weeks of the tenancy.
Penalty: a fine of \$5 000.
- (2) A park operator must not require a long-stay tenant to pay any further rent before the end of any period for which rent has been paid.
Penalty: a fine of \$5 000.

26. Written receipts for rent

- (1) When a park operator receives any rent under a long-stay agreement, the park operator must give the long-stay tenant a written receipt for the rent within 3 working days.
- (2) The receipt must specify —
 - (a) the date on which the rent was received;
 - (b) the amount paid;
 - (c) the period for which the amount is paid;
 - (d) the name of the long-stay tenant; and
 - (e) particulars of the agreed premises.
Penalty: a fine of \$5 000.

- (3) However, the park operator does not have to give a written receipt for rent that is paid, under an agreement between the park operator and the long-stay tenant, into an ADI account nominated by the park operator.

27. Requiring post-dated cheques prohibited

A person must not require a post-dated cheque or other post-dated negotiable instrument in payment of rent.

Penalty: a fine of \$5 000.

28. Rent records kept by park operator

- (1) A park operator must keep a record of the rent received for agreed premises.

Penalty: a fine of \$5 000.

- (2) A person must not make an entry in a record that the person knows is false or misleading in a material particular.

Penalty: a fine of \$5 000.

29. Apportionment of rent

- (1) Rent payable under a long-stay agreement —
- (a) accrues from day to day; and
 - (b) is to be apportioned accordingly when the agreement ends.
- (2) Any amount payable or recoverable as a result of the apportionment is payable or recoverable immediately.

30. Variation of rent under on-site home agreement

- (1) A park operator may increase the rent payable under an on-site home agreement by giving a written notice to the long-stay tenant specifying —
- (a) the amount of the increased rent; and
 - (b) the day from which the increased rent becomes payable.

- (2) The day specified in the notice from which the increased rent becomes payable must be —
- (a) at least 60 days after the day on which the notice is given;
 - (b) at least 6 months after the day on which the tenancy period began;
 - (c) if the rent has previously been increased under this section — at least 6 months after the day on which it was last increased; and
 - (d) if the on-site home agreement is for a fixed term — after the last day of the fixed term, unless the agreement provides that the rent may increase or be increased during the fixed term.
- (3) Subsection (2)(b) does not apply in respect of the first notice given to a long-stay tenant after the beginning of the tenancy period if —
- (a) it is the practice of the park operator to review the rent payable by long-stay tenants in accordance with a set review date schedule; and
 - (b) the long-stay tenant was given written notice of the set review date schedule before the long-stay agreement was made.
- (4) A notice of increase of rent that has been given in accordance with this section and has not been withdrawn by the park operator varies the long-stay agreement to the effect that the increased rent specified in the notice is payable under the agreement from the day specified in the notice.
- (5) This section does not apply in respect of an agreement if, and to the extent that, the agreement expressly excludes or limits it.

31. Variation of rent on the basis of current market rent

If a long-stay agreement provides for a review of rent on a market rent basis then, when calculating the amount of rent to

be payable on and after the review date, the park operator must have regard to a report obtained for the purpose by the park operator from a person licensed under the *Land Valuers Licensing Act 1978*.

Penalty: a fine of \$5 000.

Division 4 — Terms of long-stay agreements

32. Terms of long-stay agreements — Schedule 1

- (1) Schedule 1 applies with respect to the terms of long-stay agreements.
- (2) A long-stay agreement may exclude, modify or restrict any, or all, of the following terms set out in Schedule 1 —
 - (a) term 1 (vacant possession);
 - (b) term 2 (no legal impediment to occupation of tenanted premises);
 - (c) term 5 (responsibility for cleanliness);
 - (d) term 6 (responsibility for damage);
 - (e) term 7 (park operator's responsibility for cleanliness and repairs);
 - (f) term 8 (compensation where tenant sees to repairs);
 - (g) term 10 (tenant's conduct on premises);
 - (h) term 12 (locks);
 - (i) term 13 (park operator's right of entry);
 - (j) term 14 (tenant's right to remove fixtures or alter premises);
 - (k) term 15 (rates, taxes and charges paid by park operator);
 - (l) term 16 (provision for assigning or sub-letting the premises);
 - (m) term 17 (tenant's vicarious responsibility for breach of agreement).

Part 3 — Termination of long-stay agreements

Division 1 — Termination of agreements generally

33. How long-stay agreements are terminated

- (1) If a long-stay tenant or park operator gives a notice of termination of a long-stay agreement, the agreement is terminated when both of the following events have happened —
 - (a) the period of notice, or any shorter or longer period agreed between the tenant and the park operator, has ended; and
 - (b) the tenant has given vacant possession of the agreed premises to the park operator.
- (2) A long-stay agreement for a fixed term is terminated when both of the following events have occurred —
 - (a) the fixed term has ended; and
 - (b) the tenant has given vacant possession of the agreed premises to the park operator.
- (3) In any other case, a long-stay agreement ends when —
 - (a) the State Administrative Tribunal terminates the agreement under Part 5;
 - (b) a person whose title is superior to the title of the park operator becomes entitled to possession of the agreed premises;
 - (c) a mortgagee of the agreed premises takes possession of the premises under the mortgage;
 - (d) the long-stay tenant abandons the agreed premises;
 - (e) the long-stay tenant gives vacant possession of the premises under a written agreement with the park operator to end the long-stay agreement; or
 - (f) the rights under the agreement of the park operator or the long-stay tenant are ended by merger.

34. Terms of continued long-stay agreement

If a long-stay agreement continues beyond the day on which it would upon its terms have ended as a result of the passage of time or the happening of an event, the same terms as last applied before that day continue to apply unless the terms are modified by the State Administrative Tribunal under Part 5.

35. Withholding rent in anticipation of release of security bond

A long-stay tenant must not fail or refuse to pay any rent due under a long-stay agreement with the intention that the park operator will recover the amount of the rent from the security bond paid by the tenant.

Penalty: a fine of \$5 000.

36. Failure to give vacant possession at end of fixed term

Failure by a long-stay tenant under a long-stay agreement for a fixed term to give vacant possession of the agreed premises to the park operator at the end of the fixed term does not constitute a breach of the agreement.

37. Form of default notice

A default notice must —

- (a) be in writing signed by the park operator;
- (b) identify the agreed premises; and
- (c) include the prescribed information (if any).

38. Form of notice of termination

A notice of termination must —

- (a) be in writing;
- (b) be signed by the person who is giving the notice;
- (c) identify the agreed premises; and
- (d) include the prescribed information (if any).

Division 2 — Notice of termination by park operator

39. Termination by park operator for non-payment of rent

- (1) If a long-stay tenant does not pay rent in accordance with the long-stay agreement, the park operator may give to the tenant, in accordance with this section —
 - (a) a notice of termination; or
 - (b) a default notice and, if the rent is not paid in full on or before the specified day in the default notice, a notice of termination.
- (2) A notice of termination under subsection (1)(a) or (b) must —
 - (a) specify the amount of rent outstanding;
 - (b) specify the day on which the park operator requires the long-stay tenant to give vacant possession of the agreed premises to the park operator;
 - (c) tell the tenant that, if the amount is not paid in full on or before the specified day, the park operator is entitled to terminate the agreement under this Act; and
 - (d) comply with section 38.
- (3) A default notice under subsection (1)(b) must —
 - (a) specify the amount of rent outstanding;
 - (b) specify the day on or before which the park operator requires the amount to be paid;
 - (c) tell the long-stay tenant that, if the amount is not paid in full on or before the specified day, the park operator is entitled to give to the tenant a notice of termination under this Act; and
 - (d) comply with section 37.

- (4) The following provisions apply where the park operator gives a default notice to the long-stay tenant under subsection (1)(b) —
- (a) the day specified in the default notice must be at least 14 days after the day on which the default notice was given to the tenant;
 - (b) if the park operator also gives the tenant a notice of termination under subsection (1)(b), the day specified in the notice of termination must be at least 7 days after the specified day in the default notice;
 - (c) if the park operator makes an application to the State Administrative Tribunal under section 66 in relation to the notice of termination, the application may be heard and determined even if the rent is paid in full before the time set down for hearing the application.
- (5) The following provisions apply where the park operator gives a notice of termination to the long-stay tenant under subsection (1)(a) without having first given a default notice under subsection (1)(b) —
- (a) the day specified in the notice of termination must be at least 7 days after the day on which the notice of termination is given to the tenant;
 - (b) if the park operator makes an application to the State Administrative Tribunal under section 66 in relation to the notice of termination, the park operator must withdraw the application if the rent and the amount of the filing fee for the application are both paid in full more than 24 hours before the time set down for hearing the application.
- (6) The day specified in a notice of termination given under subsection (1)(a) or (b) may be —
- (a) a day earlier than the last day of the fixed term of a fixed term tenancy; or
 - (b) a day earlier than the last day of a period of a periodic tenancy.

40. Termination by park operator for other breaches

- (1) If a long-stay tenant breaches a term of the long-stay agreement (except a term for the payment of rent) the park operator may give a default notice to the tenant.
- (2) The default notice must —
 - (a) describe the breach and state when it occurred;
 - (b) specify a day on or before which the breach must be remedied;
 - (c) tell the long-stay tenant that, if the breach is not remedied on or before the specified day, the park operator is entitled to terminate the agreement under this Act; and
 - (d) comply with section 37.
- (3) The day specified in the default notice must be at least 14 days after the day on which the notice is given to the long-stay tenant.
- (4) If the breach is not remedied on or before the day specified in the default notice or within any further time agreed between the park operator and the long-stay tenant, the park operator may give a notice of termination to the long-stay tenant.
- (5) The notice of termination must —
 - (a) state the grounds for giving the notice;
 - (b) specify the day on or before which the park operator requires the long-stay tenant to give vacant possession of the agreed premises to the park operator; and
 - (c) comply with section 38.
- (6) The day specified in the notice of termination must be at least 7 days after the day on which the notice was given to the long-stay tenant.

- (7) The day specified in the notice of termination may be —
 - (a) a day earlier than the last day of the fixed term of a fixed term tenancy; or
 - (b) a day earlier than the last day of a period of a periodic tenancy.

41. Termination if vacant possession required on sale of park

- (1) 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 of the agreed premises.
- (2) The notice of termination must —
 - (a) state that the park operator intends to terminate the long-stay agreement under this section;
 - (b) specify the day on or before which the park operator requires the long-stay tenant to give vacant possession of the agreed premises to the park operator; and
 - (c) comply with section 38.
- (3) The specified day must be —
 - (a) for an on-site home agreement — at least 60 days after the day on which the notice is given; and
 - (b) for a site-only agreement — at least 180 days after the day on which the notice is given.
- (4) The specified day may be —
 - (a) a day earlier than the last day of the term of a fixed term tenancy; or
 - (b) a day earlier than the last day of a period of a periodic tenancy.
- (5) A park operator must not knowingly give a notice of termination that falsely claims or falsely implies that grounds exist for terminating the agreement under this section.
Penalty: a fine of \$10 000.

42. Termination by park operator without grounds

- (1) A park operator may give a notice of termination to a long-stay tenant to terminate the long-stay agreement without grounds.
- (2) The notice of termination must —
 - (a) state that the park operator intends to terminate the long-stay agreement under this section;
 - (b) specify the day on or before which the park operator requires the long-stay tenant to give vacant possession of the agreed premises to the park operator; and
 - (c) comply with section 38.
- (3) The specified day must be —
 - (a) for an on-site home agreement — at least 60 days after the day on which the notice is given;
 - (b) for a site-only agreement — at least 180 days after the day on which the notice is given; and
 - (c) in any case, if the agreement is for a fixed term, not before the end of the fixed term.
- (4) The specified day may be a day earlier than the last day of a period of a periodic tenancy.
- (5) Unless the State Administrative Tribunal otherwise orders under section 74, a notice of termination under this section is of no effect if —
 - (a) an application for an order under section 63(1) fixing the maximum rent for the agreed premises has been made but has not been heard and determined; or
 - (b) an order under section 63(3) is in force in respect of the agreed premises.

43. Notice not waived by acceptance of rent

A demand for, any proceeding for the recovery of, or acceptance of, rent by a park operator after the park operator has become aware of a breach by the long-stay tenant of a term of the

long-stay agreement (except a breach of a term for the payment of rent) or has given the tenant notice of termination under this Act does not operate as a waiver of the breach or of the notice.

Division 3 — Notice of termination by tenant

44. Termination by tenant without grounds

- (1) A long-stay tenant may give a notice of termination to the park operator to terminate the long-stay agreement without grounds.
- (2) The notice of termination must —
 - (a) specify the day on which the tenant intends to give vacant possession of the agreed premises to the park operator; and
 - (b) comply with section 38.
- (3) The specified day must be —
 - (a) at least 21 days after the day on which the notice is given to the park operator; and
 - (b) if the long-stay agreement is for a fixed term — not before the end of the fixed term.

Division 4 — Notice of termination by park operator or tenant — agreement frustrated

45. Termination if agreement frustrated

- (1) This section applies if agreed premises or shared premises —
 - (a) become uninhabitable or unusable for the intended purpose otherwise than as a result of a breach of the long-stay agreement;
 - (b) cease to be lawfully usable for the intended purpose; or
 - (c) are compulsorily acquired by an authority under a written law.
- (2) The rent payable under the long-stay agreement is abated appropriately.

- (3) Either party to the long-stay agreement may give a notice of termination to the other.
- (4) The notice of termination must —
 - (a) state that the person giving the notice intends to terminate the long-stay agreement under this section;
 - (b) specify the day on which the agreement is to be terminated; and
 - (c) comply with section 38.
- (5) If the park operator gives the notice of termination to the long-stay tenant, the specified day must be at least 7 days after the day on which the notice is given.
- (6) If the long-stay tenant gives the notice of termination to the park operator, the specified day must be at least 2 days after the day on which the notice is given.
- (7) In either case the specified day may be —
 - (a) a day earlier than the last day of the fixed term of a fixed term tenancy; or
 - (b) a day earlier than the last day of a period of a periodic tenancy.

Division 5 — Compensation

46. When long-stay tenant is entitled to compensation

- (1) A long-stay tenant under a long-stay agreement for a fixed term is entitled to compensation for loss incurred as a result of the termination of the long-stay agreement —
 - (a) under section 41 (termination if vacant possession required on sale of park);
 - (b) under section 42 (termination by park operator without grounds);
 - (c) under section 45 (termination if agreement frustrated);or

- (d) under an order under section 73 (termination on grounds of hardship to park operator).
- (2) The amount payable is the amount agreed between the long-stay tenant and the park operator or, if the parties cannot agree, the amount determined by the State Administrative Tribunal on an application under section 65.

47. When is a park operator entitled to compensation

If a long-stay tenant abandons the agreed premises, the park operator is entitled to compensation by the tenant for any loss (including loss of rent) incurred by the park operator as a result of the abandonment.

Division 6 — Abandoned goods

48. Disposing of goods abandoned by tenant

- (1) Goods that are or were owned by, or under the control of, a long-stay tenant may be treated as abandoned goods if they remain on the agreed premises for more than 2 days after the day on which the long-stay agreement was terminated.
- (2) The park operator may remove and destroy or otherwise dispose of abandoned goods if —
 - (a) the goods are perishable foodstuffs; or
 - (b) the cost of the removal, storage and sale of the goods is or is likely to be more than the estimated value of the goods.
- (3) If abandoned goods cannot be dealt with under subsection (2), the park operator must store them appropriately in a safe place for at least 60 days.
- (4) Within 7 days after storing the abandoned goods, the park operator must —
 - (a) send a notice to the long-stay tenant or former long-stay tenant in accordance with the regulations; and

- (b) arrange for the notice or a summary of the notice to be published in a newspaper circulating generally throughout Western Australia.
- (5) If the abandoned goods are not reclaimed within 60 days after the day on which they were put into storage, the park operator must as soon as practicable arrange for the goods to be sold at public auction.
- (6) At the request of the park operator, the Commissioner may state in writing whether or not in his or her opinion there are reasonable grounds for believing that subsection (1) applies in respect of particular goods.

49. Tenant's right to reclaim abandoned goods put into storage

A person who has a legal right to goods put into storage under section 48(3) may reclaim the goods at any time before they are sold under section 48(5) on payment to the park operator of an amount equal to the costs reasonably incurred by the park operator in removing the goods from the agreed premises and storing them.

50. Title acquired by purchaser of abandoned goods

If abandoned goods are sold in accordance with section 48(5) then, unless the purchaser of the abandoned goods has actual notice of any interest in the goods of any person except the former long-stay tenant, the purchaser acquires a good title to the goods which defeats any such interest.

51. Park operator's liability for abandoned goods

If the park operator is found liable to the long-stay tenant for abandoned goods that were destroyed or otherwise disposed of, but the park operator establishes that he or she dealt with the goods in reliance on a statement of the Commissioner to the effect that, in the Commissioner's opinion, there are reasonable grounds for believing that section 48(2) applies to the goods, then the park operator is entitled to be paid an amount equal to

the amount of the liability out of the Rental Accommodation Account.

[Section 51 amended by No. 60 of 2011 s. 108.]

52. Disposition of proceeds of sale of abandoned goods

When abandoned goods are sold under section 48(5), the park operator is entitled to retain out of the proceeds of the sale an amount equal to the sum of —

- (a) the reasonable costs of removing, storing and selling the goods; and
- (b) any amount owed to the park operator by the long-stay tenant under the long-stay agreement.

Division 7 — Miscellaneous provisions

53. Duty of mitigation following breach of agreement

The rules under the law of contract relating to mitigation of loss or damage upon breach of a contract apply to a breach of a long-stay agreement.

54. No recovery of vacant possession during tenancy period

A person must not enter the agreed premises during the tenancy period for the purpose of recovering possession of the premises or part of them from the long-stay tenant, whether the entry is effected peaceably or otherwise, except in accordance with an order of the State Administrative Tribunal.

Penalty: a fine of \$20 000.

Part 4 — Other matters related to residential parks

Division 1 — Sale of relocatable homes on site

55. Long-stay tenant's right to sell relocatable home on site

- (1) It is a term of a site-only agreement that the long-stay tenant is entitled to sell a relocatable home owned by the tenant while it is in place on the agreed premises, unless the agreement expressly provides that on site sales are prohibited.
- (2) The long-stay tenant is entitled to display a “for sale” sign, but must comply with any term of the site-only agreement or the park rules that reasonably restricts the size and placement of the sign.
- (3) Before offering the relocatable home for sale, or displaying a “for sale” sign, the long-stay tenant must tell the park operator of the tenant's intention to offer the home for sale while it is on the agreed premises.
- (4) If the long-stay tenant is permitted under the site-only agreement to assign the tenant's rights under the agreement to a third party, the tenant must also tell the park operator whether the tenant intends to assign those rights to the purchaser of the relocatable home.

56. Park operator's obligations

If the park operator has been told of the long-stay tenant's intentions in accordance with section 55(3) and (4), the park operator must not unreasonably restrict potential buyers —

- (a) from inspecting the relocatable home; and
- (b) if the tenant intends to assign his or her rights under the agreement — from inspecting the shared premises.

Penalty: a fine of \$20 000.

57. When park operator acts as agent in sale on site

- (1) A park operator may act as a selling agent for a long-stay tenant who wishes to sell a relocatable home on the agreed premises if the park operator and the tenant make a written agreement for the park operator to do so.
- (2) The park operator is entitled to be paid a reasonable commission by the long-stay tenant when the relocatable home is sold.
- (3) The selling agency agreement between the park operator and the long-stay tenant must specify the amount of the commission to be paid, or the method of calculating the amount.
- (4) However, no commission is payable if the relocatable home is not sold or if it is sold otherwise than as a result of the agency of the park operator under the selling agency agreement.

58. Park operator's authority to act as selling agent

- (1) When a park operator acts as a selling agent under a selling agency agreement, the park operator is not required to hold —
 - (a) a licence of an agent under the *Real Estate and Business Agents Act 1978*; or
 - (b) a dealer's licence under the *Motor Vehicle Dealers Act 1973*.
- (2) However, when the park operator receives any money under the selling agency agreement (except commission payable to the park operator under the agreement) the park operator must —
 - (a) deposit the money in a separate ADI account opened in the name of the park operator and the long-stay tenant and entitled "sale trust account"; and
 - (b) when the sale is completed, pay the proceeds at the direction of the tenant after deducting in accordance with the selling agency agreement any amounts owing to the park operator by way of expenses or commission.

- (3) The *Real Estate and Business Agents Act 1978* section 68(2), (3), (4), (5) and (6) apply to the sale trust account as if a reference in those subsections to an agent and to a trust account were a reference to the park operator and to the sale trust account respectively.

Division 2 — Park liaison committees

59. Establishment of park liaison committee

- (1) If a residential park has 20 or more long-stay sites, the park operator must convene and maintain a park liaison committee for the park in accordance with section 60.
Penalty: a fine of \$5 000.
- (2) It is a defence to a prosecution for an offence under subsection (1) that the park operator took all reasonable steps to convene and maintain a park liaison committee.

60. Constitution of park liaison committee

- (1) A park liaison committee consists of —
- (a) one or more long-stay tenants of the residential park, chosen by the other long-stay tenants of the park to represent the interests of long-stay tenants; and
 - (b) one or more representatives of the park operator.
- (2) There must be more members of the park liaison committee who are representatives of the long-stay tenants than there are members who are representatives of the park operator.
- (3) The Commissioner may make and publish guidelines with respect to —
- (a) choosing the members of a park liaison committee who are representatives of the long-stay tenants; and
 - (b) the procedures to be observed at meetings of a park liaison committee.

61. Functions of a park liaison committee

- (1) The principal objective of a park liaison committee is to assist the park operator to maintain and improve the lifestyle and wellbeing of persons who use the residential park as their sole or principal place of residence.
- (2) The park liaison committee's functions are —
 - (a) to advise and consult with the park operator about the following —
 - (i) the preparation of park rules and amendments of the rules;
 - (ii) the development of guidelines for the standards of behaviour applicable to the residents of the residential park;
 - (iii) the development of policies for the improvement and maintenance of the natural environment and the amenities of the residential park;
 - (iv) any other matter prescribed by the regulations;
 - (b) to assist the park operator —
 - (i) to ensure that the park rules are observed by park residents;
 - (ii) to resolve disputes between park residents; and
 - (iii) to resolve disputes between park residents and the park operator;and
 - (c) to carry out any other function prescribed by the regulations.
- (3) In this section —

park resident means —

 - (a) a long-stay tenant; or

- (b) a person who occupies agreed premises in accordance with the long-stay agreement and with the permission of the long-stay tenant.

Part 5 — State Administrative Tribunal powers

Division 1 — General provisions

62. Breaches of agreement and other disputes

- (1) This section applies in relation to a party to any of the following —
 - (a) an agreement for an option to enter into a long-stay agreement;
 - (b) a long-stay agreement;
 - (c) a selling agency agreement.
- (2) The party may apply to the State Administrative Tribunal for relief if —
 - (a) a breach of the agreement has occurred; or
 - (b) any other dispute has arisen under or in connection with the agreement or in connection with any payment to be made under or in connection with the agreement.
- (3) On hearing an application under subsection (2) or another provision of this Part, the State Administrative Tribunal may give such directions and make such orders as it considers appropriate.
- (4) Without limiting subsection (3), the State Administrative Tribunal may do any or all of the following —
 - (a) restrain any action in breach of a long-stay agreement;
 - (b) require any action in performance of a long-stay agreement;
 - (c) revoke or alter a park rule, or give directions modifying the operation of a park rule in relation to a long-stay tenant;
 - (d) order the payment of any amount payable under a long-stay agreement;

- (e) 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);
- (f) 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;
- (g) 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;
- (h) determine the amount of rent payable under a long-stay agreement, having regard to the terms of the agreement;
- (i) 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;
- (j) 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;
- (k) make such other orders as the tribunal considers appropriate.

63. Orders for reduction of rent

- (1) A long-stay tenant may apply to the State Administrative Tribunal for an order reducing the amount of rent payable for the agreed premises on the grounds —
 - (a) that since the long-stay agreement was entered into, or was last renewed or extended, there has been, without any default on the part of the tenant, a significant reduction in the size or quality of the agreed premises, or in the number or quality of the chattels provided with the agreed premises, or in the extent or quality of the shared

- premises or the facilities provided as part of the shared premises; or
- (b) that in determining the amount of rent payable for the agreed premises the park operator was wholly or partly motivated by a desire for the tenancy to be terminated.
- (2) An application may be made whether or not a long-stay tenant has paid or agreed to pay the amount of rent the subject of the application.
- (3) The State Administrative Tribunal may order that the amount of rent payable for the agreed premises is reduced if satisfied that —
- (a) the grounds of the application are made out; and
- (b) the amount is excessive in the circumstances.
- (4) When deciding whether or not to make an order, the State Administrative Tribunal may have regard to —
- (a) the amounts of rent generally payable for comparable premises in the locality or a similar locality;
- (b) the estimated capital value of the agreed premises at the date of the application;
- (c) the amount of the outgoings to be borne by the park operator in respect of the agreed premises;
- (d) the estimated cost of any services provided by the park operator or the long-stay tenant under the long-stay agreement;
- (e) the value and nature of any chattels provided for the use of the tenant with the agreed premises or as part of the shared premises;
- (f) the standard and nature of the facilities and amenities that are available for the use of the tenant as part of the shared premises;

- (g) in the case of an on-site home agreement — the standard of accommodation and amenities provided in the agreed premises and the state of repair and general condition of the agreed premises; and
 - (h) any other relevant matter.
- (5) When the State Administrative Tribunal makes the order, it must —
 - (a) specify the maximum amount of rent payable by the long-stay tenant for the agreed premises;
 - (b) specify the day on and after which the reduced amount is payable, being a day not earlier than the day on which the tenant applied for the reduction in rent; and
 - (c) specify the minimum period for which the reduced amount is payable.

64. Orders when premises abandoned by tenant

- (1) The park operator may apply to the State Administrative Tribunal for a declaration that a long-stay tenant has abandoned the agreed premises.
- (2) The State Administrative Tribunal may make the declaration if there are reasonable grounds for believing that the long-stay tenant has abandoned the agreed premises.
- (3) If the State Administrative Tribunal makes the declaration, the tribunal —
 - (a) must specify in it the day on which the long-stay tenant is to be taken to have abandoned the agreed premises; and
 - (b) may specify the amount of compensation to which the park operator is entitled under section 47.

65. Determination of compensation payable to long-stay tenant

- (1) A party to a long-stay agreement may apply to the State Administrative Tribunal for a determination of the amount of compensation to which the long-stay tenant is entitled under section 46 in relation to the agreement.
- (2) When determining the amount of compensation to be paid to the long-stay tenant on the termination of a site-only agreement, the State Administrative Tribunal may have regard to the following —
 - (a) the cost of removing the relocatable home from the agreed premises, including the costs incurred in disconnecting telephone, gas, electricity, water or other services;
 - (b) the cost of towing or carrying the relocatable home for the distance from the residential park to another site designated by the long-stay tenant, or for 600 km, whichever is shorter;
 - (c) the cost of erecting the relocatable home on the other site, including the costs incurred in connecting telephone, gas, electricity, water or other services;
 - (d) the cost of establishing the relocatable home at the new site, including any costs reasonably incurred in landscaping the site to a standard comparable to that of the previous site;
 - (e) any prescribed matters.
- (3) When determining the amount of compensation to be paid to the long-stay tenant on the termination of an on-site home agreement, the State Administrative Tribunal may have regard to the following —
 - (a) the cost incurred by the long-stay tenant in travelling, and transporting his or her possessions that are kept at the residential park, for the distance from the residential park to other premises designated by the tenant, or for 600 km, whichever is shorter;

- (b) any other loss incurred as a result of the termination of the agreement;
- (c) any prescribed matters.

Division 2 — Orders relating to vacant possession

66. Orders for vacant possession if rent not paid

- (1) This section applies where —
 - (a) a park operator has given a notice of termination to a long-stay tenant under section 39(1)(a) or (b) on the grounds that the tenant has not paid rent in accordance with the long-stay agreement; and
 - (b) the tenant does not give vacant possession of the agreed premises to the park operator on the day specified in the notice of termination.
- (2) The park operator may apply to the State Administrative Tribunal for —
 - (a) an order terminating the long-stay agreement; and
 - (b) an order requiring the long-stay tenant to give vacant possession of the premises to the park operator.
- (3) An application cannot be made —
 - (a) before the notice of termination is given to the long-stay tenant; or
 - (b) more than 30 days after the day specified in the notice of termination as the day on which the park operator requires the tenant to give vacant possession of the agreed premises to the park operator.
- (4) If, under section 39(1)(a), the park operator gave to the long-stay tenant a notice of termination only, then, on hearing the application, the State Administrative Tribunal may make the orders if —
 - (a) the notice of termination was given in accordance with this Act;

- (b) the day on which the orders are made is at least 21 days after the day on which the notice of termination was given to the tenant; and
 - (c) the park operator was not required to withdraw the application under section 39(5)(b).
- (5) If, under section 39(1)(b), the park operator gave to the long-stay tenant both a default notice and a notice of termination, the State Administrative Tribunal may make the orders if —
 - (a) the notices were given in accordance with this Act; and
 - (b) the day on which the orders are made is at least 21 days after the day on which the default notice was given to the tenant.
- (6) The State Administrative Tribunal must specify in an order the day on which the order takes effect.
- (7) The day specified in the order must be at least 7 days after the day on which the order is made.
- (8) The day specified in the order may be —
 - (a) a day earlier than the last day of the fixed term of a fixed term tenancy; or
 - (b) a day earlier than the last day of a period of a periodic tenancy.

67. Orders for vacant possession at end of fixed term

- (1) This section applies where —
 - (a) the fixed term under a long-stay agreement for a fixed term has ended;
 - (b) there is no agreement between the long-stay tenant and the park operator to continue the tenancy as a periodic tenancy; and
 - (c) the tenant has not given vacant possession of the agreed premises to the park operator.

- (2) The park operator may apply to the State Administrative Tribunal for —
 - (a) an order terminating the agreement; and
 - (b) an order for the long-stay tenant to give vacant possession of the premises to the park operator.
- (3) The State Administrative Tribunal may make the orders.
- (4) The State Administrative Tribunal must specify in an order the day on which the order takes effect.
- (5) The day specified under subsection (4) must be at least 7 days after the day on which the order is made.
- (6) However, the State Administrative Tribunal may suspend the operation of the order for a further period of not more than 30 days, having regard to the relative hardship that would be caused —
 - (a) to the park operator by suspending the orders; and
 - (b) to the long-stay tenant by not suspending the orders.

68. Orders for vacant possession on other grounds

- (1) This section applies where —
 - (a) a park operator has given a notice of termination to a long-stay tenant (except a notice of termination under section 39), or a long-stay tenant has given a notice of termination to the park operator; and
 - (b) the tenant does not give vacant possession of the agreed premises to the park operator on the specified day.
- (2) The park operator may apply to the State Administrative Tribunal for —
 - (a) an order terminating the agreement; and
 - (b) an order for the long-stay tenant to give vacant possession of the premises to the park operator.

- (3) An application must be made within 30 days after the specified day.
- (4) The State Administrative Tribunal may make the orders if a notice of termination was given in accordance with this Act and —
 - (a) where the notice was given on the grounds that the long-stay tenant has breached the long-stay agreement — the State Administrative Tribunal is satisfied that the grounds are made out and that the breach is in all the circumstances such as to justify terminating the agreement; or
 - (b) if the notice was given for any other reason — the tribunal is satisfied that terminating the agreement is justified in all the circumstances.
- (5) However, the State Administrative Tribunal may refuse to make the orders if satisfied —
 - (a) that the park operator was wholly or partly motivated to give the notice by the fact that the long-stay tenant had complained to a public authority about the park operator's conduct in relation to the agreement, or taken steps to secure or enforce his or her rights as a tenant under the agreement;
 - (b) if the notice was given by the park operator on the grounds of a breach by the tenant — that the tenant has remedied the breach, but when making the decision the tribunal must take into account any previous breaches of the agreement by the tenant; or
 - (c) if the notice was given by the park operator under section 45(3) on the grounds of frustration of the agreement — that the consequences of continuing the agreement would not be unduly burdensome to the park operator.
- (6) If the State Administrative Tribunal makes the orders, it may suspend the operation of the orders for not more than 30 days if

satisfied that it is desirable in the circumstances to do so having regard to the relative hardship that would be caused —

- (a) to the park operator by suspending the orders; or
 - (b) to the long-stay tenant by refusing to suspend the orders.
- (7) Where the park operator gave the notice of termination to the long-stay tenant, and the State Administrative Tribunal is satisfied that the tenant had, within the 6 months before the notice was given to him or her, complained to a public authority about the park operator's conduct in relation to the agreement, or taken steps to secure or enforce his or her rights as a tenant under the agreement, the burden is on the park operator to prove that the park operator was not to any extent motivated by that fact when giving notice to the tenant.
- (8) When the State Administrative Tribunal makes the orders, the tribunal must specify the day on which the orders take effect.
- (9) The specified day must be no later than 7 days after the day on which the order is made.
- (10) The *Limitation Act 1935* does not apply to an application under this section.

69. Orders for compensation to park operator for holding over

- (1) A park operator is entitled to compensation for any loss (including loss of rent) incurred by the park operator as a result of the tenant's failure to comply with an order for vacant possession made by the State Administrative Tribunal.
- (2) The park operator may apply to the State Administrative Tribunal for an order for compensation.
- (3) An application must be made within 30 days after the day specified in the order as the day on which the tenant was to give vacant possession of the agreed premises.

- (4) The State Administrative Tribunal may order the tenant to pay to the park operator the amount to which the park operator is entitled under subsection (1).

70. Tenant's protection against holder of superior title

- (1) The State Administrative Tribunal must not make an order for recovery of possession of agreed premises unless the tribunal is satisfied —
 - (a) as to whether or not a person has possession of the agreed premises as a long-stay tenant under a long-stay agreement or as a former tenant holding over after the termination of a long-stay agreement, not being the immediate tenant or former tenant of the applicant for the order; and
 - (b) if so, that the tenant or former tenant has had reasonable notice of the application.
- (2) A person who has possession of the agreed premises as described in subsection (1) may apply to the State Administrative Tribunal for an order vesting a tenancy of the agreed premises in the person.
- (3) An application under subsection (2) may be made within a reasonable time after the person has notice of the proceedings for the recovery of possession, or notice of the making of the order for recovery of possession, as the case may be.
- (4) The State Administrative Tribunal may make an order vesting the tenancy in the applicant on such terms and conditions as the tribunal thinks appropriate.

Division 3 — Orders relating to termination of agreements

71. Orders to terminate agreement if tenant is causing damage or injury

- (1) A park operator may apply to the State Administrative Tribunal for an order terminating a long-stay agreement on the grounds

that the long-stay tenant has intentionally or recklessly caused or permitted, or is likely, intentionally or recklessly, to cause or permit —

- (a) serious damage to park premises; or
 - (b) injury to the park operator or to an agent of the park operator, or to any other person lawfully on park premises.
- (2) The State Administrative Tribunal may make the order if satisfied that the grounds are made out.
- (3) If the State Administrative Tribunal makes the order, it must also order the long-stay tenant to give vacant possession of the agreed premises to the park operator.
- (4) An order under this section takes effect immediately.

72. Orders to terminate agreement for breach by park operator

- (1) A long-stay tenant may apply to the State Administrative Tribunal for an order to terminate the long-stay agreement on the grounds that the park operator has breached a term of the agreement.
- (2) The State Administrative Tribunal may make the order if it is satisfied that —
- (a) the grounds are made out; and
 - (b) the breach is in all the circumstances such as to justify terminating the long-stay agreement.
- (3) The State Administrative Tribunal must specify in the order the day on which the long-stay tenant is to give vacant possession of the agreed premises to the park operator.

73. Termination on grounds of hardship to park operator

- (1) A park operator may apply to the State Administrative Tribunal for an order under subsection (2).

- (2) The State Administrative Tribunal may make an order terminating a long-stay agreement if satisfied that the park operator would, in the circumstances of the case, suffer undue hardship if required to terminate the agreement under any other provision of this Act.
- (3) The State Administrative Tribunal must specify in the order the day on which the long-stay tenant is to give vacant possession of the agreed premises to the park operator.

74. Tribunal's power during fair rent proceedings

For the purposes of section 42(5), the State Administrative Tribunal may, on the application of a park operator, authorise the park operator to give a notice of termination to a long-stay tenant under section 42(1) if the tribunal is satisfied that the park operator is not wholly or partly motivated to give the notice of termination by an application made by the tenant for an order under section 63, or by the making or effect of an order that is in force under section 63.

Division 4 — Orders relating to abandoned goods

75. Disposing of proceeds of sale of abandoned goods

- (1) Where the proceeds of the sale of abandoned goods exceed the amount to which the park operator is entitled under section 52, the park operator may apply to the State Administrative Tribunal to determine the amount of the balance.
- (2) If the amount specified in the determination is paid to the State Administrative Tribunal, the receipt of the tribunal for the amount is sufficient discharge to the park operator of the park operator's liability in respect of the proceeds of the sale.
- (3) Amounts paid to the State Administrative Tribunal are payable to the Rental Accommodation Account.

[Section 75 amended by No. 60 of 2011 s. 108.]

76. Park operator's claim if sale proceeds insufficient

- (1) Where the proceeds of the sale of abandoned goods are insufficient to meet the costs of removing, storing and selling the goods, the park operator may apply to the State Administrative Tribunal for an order under subsection (2).
- (2) The State Administrative Tribunal may make an order for the payment to the park operator of an amount equal to the difference between the proceeds of the sale and the reasonable costs of removing, storing and selling the goods if —
 - (a) the park operator has obtained a written statement from the Commissioner to the effect that, in the opinion of the Commissioner, section 48(2) does not apply to the goods; and
 - (b) the tribunal is satisfied that the amount of the costs exceeds the amount of the proceeds.
- (3) The amount specified in the order is payable to the park operator out of the Rental Accommodation Account.

[Section 76 amended by No. 60 of 2011 s. 108.]

77. Recovery by owner of value of goods sold

- (1) If an amount of money is paid into the Rental Accommodation Account from the proceeds of the sale of abandoned goods, a person who had a legal right to the goods before they were sold may apply to the State Administrative Tribunal for the amount to be paid to him or her.
- (2) The State Administrative Tribunal may order the amount to be paid to the applicant out of the Rental Accommodation Account if satisfied that the applicant is entitled to it.

[Section 77 amended by No. 60 of 2011 s. 108.]

Division 5 — Miscellaneous provisions

78. Meaning of “original party” in this Division

In this Division —

original party in relation to legal proceedings, means a party to a long-stay agreement on whose behalf the Commissioner is acting in the proceedings as provided in section 79.

79. Proceedings instituted or defended by Commissioner

- (1) The Commissioner may take part in proceedings under this Act with a view to enforcing or protecting the rights under this Act of a party to a long-stay agreement (the ***original party***) if —
 - (a) the Commissioner is satisfied that there is a cause of action and that it is in the public interest to take part in the proceedings;
 - (b) the Commissioner has obtained the written consent of both the original party and the Minister; and
 - (c) if the long-stay agreement has ended — the original party made a complaint to the Commissioner within 3 months after the day on which it ended.
- (2) For the purposes of subsection (1), the Commissioner may —
 - (a) institute proceedings on behalf of the original party;
 - (b) defend any proceedings brought against the original party; or
 - (c) assume the conduct of proceedings that have already been commenced by or against the original party.
- (3) The original party cannot withdraw his or her consent without the consent of the Commissioner.
- (4) The Minister may make his or her consent subject to conditions.

80. Evidence in proceedings undertaken by Commissioner

- (1) In proceedings to which the Commissioner is a party under section 79, a statement purporting to be signed by the Commissioner to the effect that the Commissioner is satisfied that there is a cause of action and that it is in the public interest to institute or assume the conduct of the proceedings, as the case may be, on behalf of the original party is proof, in the absence of evidence to the contrary, that the Commissioner instituted or assumed the conduct of the proceedings in accordance with section 79.
- (2) In proceedings to which the Commissioner is a party, a statement purporting to give the consent of the original party, or the consent of the Minister, to the institution, defence or assumption of the conduct of the proceedings by the Commissioner is sufficient proof, in the absence of evidence to the contrary, that the consent was given for the purposes of section 79(1)(b).

81. Conduct of legal proceedings by Commissioner

- (1) In proceedings undertaken by the Commissioner under section 79, the Commissioner has, on behalf of the original party, in all respects the same rights in, and control over, the proceedings as the original party would have had in the conduct of the proceedings, including the right to settle any action or part of any action.
- (2) The Commissioner may conduct the proceedings as the Commissioner thinks fit, without consulting or seeking the consent of the original party.
- (3) Where the Commissioner assumes the conduct of proceedings already commenced by or against the original party, the State Administrative Tribunal —
 - (a) must, on the application of the Commissioner, order the substitution of the Commissioner for the original party as a party to the proceedings; and
 - (b) may make other orders or give directions as it thinks fit.

- (4) If any party to the proceedings alleges another cause of action, or if the original party has another cause of action, then, on the application of the Commissioner, the State Administrative Tribunal —
- (a) must order that the proceedings for the other cause of action are to be heard separately;
 - (b) must order that the original party is, in his or her own right, a party to the proceedings for the other cause of action; and
 - (c) may make other orders or give directions as it thinks fit.

82. Orders exempting persons from the operation of this Act

- (1) A park operator or a long-stay tenant or prospective long-stay tenant may apply to the State Administrative Tribunal for an order under subsection (2).
- (2) The State Administrative Tribunal may order that a provision of this Act does not apply, or applies in a modified manner as specified in the order, in relation to —
- (a) the long-stay agreement or proposed long-stay agreement; or
 - (b) the park premises or any part of them.

83. Payment of costs and other amounts

- (1) Any amount (excluding costs) recovered by the Commissioner in proceedings to which the Commissioner is a party under section 79 belongs and must be paid to the original party without deduction.
- (2) Any amount awarded against the original party is payable by and recoverable from the original party.
- (3) The costs of the proceedings must be borne by or paid to and retained by the Commissioner, as the case requires.
- (4) Any amount that the Commissioner becomes liable to pay as a result of the operation of this section is charged to the

Consolidated Account, and the Consolidated Account is appropriated accordingly.

[Section 83 amended by No. 77 of 2006 s. 4.]

Part 6 — Other matters

84. Commissioner

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of this Act.
- (2) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.
- (3) In this section —
executive officer has the meaning given by the *Public Sector Management Act 1994* section 3(1).

85. The Commissioner's functions

The Commissioner has the following functions —

- (a) the investigation of and conduct of research into matters relating to the interests of parties to long-stay agreements generally or any particular party or parties;
- (b) the publication of reports and the dissemination of information on matters relating to the interests of parties to long-stay agreements;
- (c) the giving of advice to persons on the provisions of this Act or any other law relating to or affecting the interests of parties to long-stay agreements;
- (d) the investigation, upon the complaint of a party to a long-stay agreement or otherwise, of an offence against this Act or of an infringement of a party's rights arising out of any long-stay agreement and the taking of action by negotiation, prosecution of an offence or otherwise;
- (e) the making of reports to the Minister on matters referred to the Commissioner by the Minister and any other matters of importance investigated by the Commissioner for the purposes of this Act.

86. Delegation by Commissioner

- (1) The Commissioner may delegate to any other person employed in the Department any power or duty of the Commissioner under another provision of this Act.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

87. Information officially obtained to be confidential

- (1) A person who misuses information obtained by reason of any function that person has, or at any time had, in the administration of this Act commits an offence.
Penalty: a fine of \$20 000.
- (2) A person misuses information if it is, directly or indirectly, recorded, used, or disclosed to another person, other than —
 - (a) in the course of duty under this Act;
 - (b) under this or any other Act;
 - (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence;
 - (d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or
 - (e) with the consent of the person to whom the information relates, or each of them if there is more than one.

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- (3) In this section —

information means information concerning the affairs of a person.

88. Protection from liability for wrongdoing

- (1) A person is not liable for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

89. Judicial notice

All courts, judges and persons acting judicially must take judicial notice of the official signature of every person who is for the time being and every person who has at any time been the Commissioner and of the fact that such person holds or has held such office.

90. Time for commencement of offence proceedings

Proceedings for an offence against this Act cannot be commenced more than 2 years after the day on which the offence is alleged to have been committed.

91. Service of documents

- (1) A document that is required or permitted to be given to a person under this Act may be —
- (a) given to the person personally; or

- (b) sent by post addressed to the person at the person's last known place of residence, employment or business.
- (2) The park operator may give a document to a long-stay tenant for the purposes of the long-stay agreement by giving it to —
 - (a) a person who is apparently 17 years of age or older and who is apparently residing on the agreed premises; or
 - (b) the person who ordinarily pays rent under the agreement.
- (3) If it is not practicable to give a document to a person personally, and the person's address is unknown, the document is to be treated as having been given to the person if a copy of the document is published in a daily newspaper circulating throughout Western Australia.
- (4) If there are 2 or more park operators or 2 or more long-stay tenants who are parties to a long-stay agreement, the document may be given to the park operators or the tenants for the purposes of the long-stay agreement by giving it to any one of them.

92. Terms on which ADI holds security bond amounts

A security bond amount paid into an ADI account is to be held by the ADI on the following terms —

- (a) interest at a rate not less than the prescribed rate accrues on the amount for the period during which the amount is held;
- (b) the ADI must pay an amount equal to the amount of interest accrued at the prescribed rate into the Rental Accommodation Account in accordance with the regulations;
- (c) if interest accrues on the amount at a higher rate than the prescribed rate, the ADI must pay the difference between the amount of interest accrued at the prescribed rate and the amount of interest accrued at the higher rate

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to the long-stay tenant in accordance with the regulations;

- (d) the ADI may deduct from an amount paid under paragraph (b) or (c) an amount not exceeding the prescribed fee;
- (e) the security bond amount must be paid out in accordance with the regulations.

[Section 92 amended by No. 60 of 2011 s. 108.]

93. Information from ADI about tenancy bond accounts

- (1) The Commissioner may, by notice to a person who is the manager, or other officer for the time being in charge of, an authorised financial institution, require that person to give to the Commissioner such information as the Commissioner requires in relation to a tenancy bond account, including information as to the balances of and amounts of interest paid on the account.
- (2) A notice —
 - (a) must be in writing;
 - (b) must specify the time at or within which the information is to be given;
 - (c) may require the information to be —
 - (i) given in writing;
 - (ii) certified as correct by an auditor;
 - (iii) given at or sent or delivered to a place specified in the notice;
 - (iv) sent or delivered by any means specified in the notice; and
 - (v) given on oath or affirmation or by statutory declaration;
 - and
 - (d) must state that the person is required under this Act to give the information.

- (3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement.
Penalty: a fine of \$15 000.
- (4) A person must not give information in response to a requirement that the person knows is false or misleading in a material particular.
Penalty: a fine of \$15 000.
- (5) It is a defence in proceedings for an offence against subsection (3) for the person to show that —
 - (a) the notice under subsection (2) did not state that the person was required under this Act to give the information; or
 - (b) the time specified in the requirement did not give the person sufficient notice to enable compliance with the requirement.
- (6) A person is not entitled to refuse to give the information on the grounds that the information could tend to incriminate the person or render the person liable to a penalty.
- (7) Despite subsection (6), information given under this section is not admissible in evidence in any proceedings against the person except proceedings for an offence against subsection (4).
- (8) In this section —
auditor means —
 - (a) a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations Act 2001* of the Commonwealth; or
 - (b) another suitably qualified person approved by the Commissioner for the purposes of this section.

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94. Responsibilities of bond administrator

The bond administrator must —

- (a) pay into the Rental Accommodation Account all amounts of security bond paid to the bond administrator under this Act;
- (b) keep records in relation to each amount of security bond showing the name and address of the park operator and the long-stay tenant for whom the amount is held; and
- (c) pay out the amount of the bond in accordance with the regulations.

[Section 94 amended by No. 60 of 2011 s. 108.]

95. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations made under that subsection may —
 - (a) require the parties to a long-stay agreement to record on an inspection sheet, before the commencement, and after the termination, of the tenancy, their opinions of the state of the premises and prescribe the form of such inspection sheets and the manner in which the parties record their opinions;
 - (b) prescribe the matters for which a park operator is entitled to charge long-stay tenants a fee that is additional to any amount payable under the long-stay agreement;
 - (c) prescribe the maximum amount that is payable in respect of a matter prescribed under paragraph (b);

- (d) require the provision of information by the park operator to the long-stay tenant or prospective long-stay tenant at the time of entering into the long-stay agreement;
 - (e) provide for payment out of tenancy bond accounts of security bond amounts and amounts of accrued interest, and for the repayment or distribution of the amounts paid out; and
 - (f) prescribe the matters to be provided for in park rules, and may regulate the manner in which the provision for those matters is to be made.
- (3) Regulations made under subsection (1) may —
 - (a) impose a penalty not exceeding \$5 000 for offences against the regulations; and
 - (b) provide for penalties not exceeding \$500 for each separate and further offence under the *Interpretation Act 1984* section 71(2).

96. Review of the Act

- (1) The Minister must arrange for a review of the operation of this Act to be carried out as soon as practicable after the end of the period of 5 years beginning on the commencement of the Act.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and as soon as practicable after the preparation of the report cause it to be laid before each House of Parliament.

97. Transitional provisions

- (1) If, immediately before the commencement of this Act, a person held an option to make, renew or extend a residential park tenancy agreement, or to assign or otherwise transfer rights under a residential park tenancy agreement, the option may be exercised at the discretion of the person as if this Act had not been made.

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- (2) Despite section 6(3), the following applies to, and in respect of, an existing fixed term long-stay agreement made orally (as defined in section 6) to which this Act applies —
- (a) if any proceedings instituted in relation to the agreement under the *Residential Tenancies Act 1987* before the commencement of this Act have not been completed — that Act continues to apply to the proceedings as if this Act had not been made;
 - (b) proceedings may be brought subject to and in accordance with this Act in respect of a cause of action that —
 - (i) arose in connection with the long-stay agreement before the commencement of this Act; and
 - (ii) was not, immediately before that commencement, the subject of proceedings under the *Residential Tenancies Act 1987*;
 - (c) a notice of termination given in relation to the agreement under the *Residential Tenancies Act 1987* before the commencement of this Act has effect and may be enforced as if this Act had not been made;
 - (d) any process begun before the commencement of this Act by which the rent payable under the agreement may be increased may be continued and completed, and has effect to increase the rent, as if this Act had not been made, but subject to any order or determination of the State Administrative Tribunal under Part 5;
 - (e) no civil or criminal liability is incurred as a result of the application of this Act to the agreement for anything done or not done before the commencement of this Act;
 - (f) any amount of bond money held, at the commencement of this Act, in relation to the agreement under the *Residential Tenancies Act 1987* is to be treated as if it were held under this Act.

98. Consequential amendments

Schedule 2 sets out consequential amendments.

Schedule 1 — Terms of long-stay agreements

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Division 1 — Vacant possession and no impediment to occupation

1. Vacant possession

It is a term of a long-stay agreement that vacant possession of the agreed premises will be given to the long-stay tenant on the day on which the tenant is entitled under the agreement to take up occupation of the agreed premises.

2. No legal impediment to occupation of tenanted premises

(1) It is a term of a long-stay agreement on the part of the park operator that there is no legal impediment to the long-stay tenant's occupation of the agreed premises as a residence, or to the tenant's use of the agreed premises, for the period of the agreement.

(2) In this clause —

impediment means only an impediment of which, at the time of entering into the agreement, the park operator had knowledge or ought reasonably to have had knowledge.

Division 2 — Variation of rent

3. Provision for rent variation — on-site home agreement

An on-site home agreement may exclude or limit the park operator's right to increase rent under section 30.

4. Provision for rent variation — site-only agreements

(1) A site-only agreement may provide for rent to be reviewed as specified in the agreement.

(2) The provision is of no effect if the agreement provides for review of the rent at intervals of less than 12 months.

(3) The provision is of no effect unless the agreement specifies, for each review to be carried out during the tenancy period, a single basis for calculating the amount of rent payable on and after the review date.

- (4) Subclause (3) does not prevent the agreement from specifying, different bases for calculation for different review dates.
- (5) A provision of a site-only agreement is of no effect to the extent that it purports to provide that the rent payable on and after a review date is not reduced if the amount calculated on the basis specified in the agreement for that review date is less than the amount that was payable under the agreement immediately before the review date.
- (6) Subclause (2) does not prevent the agreement from specifying a day for carrying out the first review that is earlier than 12 months after the beginning of the tenancy if —
 - (a) it is the practice of the park operator to review the rent payable by long-stay tenants in accordance with a set review date schedule; and
 - (b) the long-stay tenant was given written notice of the set review date schedule before the long-stay agreement was made.

Division 3 — Cleanliness, damage and repair

5. Responsibility for cleanliness

- (1) It is a term of a site-only agreement that the long-stay tenant must keep the site and the exterior of the relocatable home on the site in a reasonable state of cleanliness.
- (2) It is a term of an on-site home agreement that the long-stay tenant must keep the site and both the interior and the exterior of the on-site home in a reasonable state of cleanliness.

6. Responsibility for damage

- (1) It is a term of a long-stay agreement that the long-stay tenant must not intentionally or negligently cause or permit damage to the agreed premises or the shared premises.
- (2) It is a term of a site-only agreement that the long-stay tenant must notify the park operator, as soon as practicable but in any case within 3 days, of any damage —
 - (a) to the site or to any fittings or fixtures on the site; or
 - (b) to the exterior of the relocatable home on the site.

- (3) It is a term of an on-site home agreement that the long-stay tenant must notify the park operator, as soon as practicable but in any case within 3 days, of any damage —
- (a) to the site or to any fittings or fixtures on the site;
 - (b) to the exterior or interior of the on-site home; or
 - (c) to any chattels, fittings or fixtures in or on the on-site home that are provided by the park operator for the use of the tenant.

7. Park operator's responsibility for cleanliness and repairs

It is a term of a long-stay agreement that the park operator must —

- (a) provide the agreed premises and the shared premises in a reasonable state of cleanliness;
- (b) maintain the shared premises in a reasonable state of cleanliness;
- (c) provide and maintain the agreed premises and the shared premises in a reasonable state of repair having regard to their age, character and prospective life; and
- (d) comply with any other written laws that apply in relation to the buildings in the residential park or the health and safety of residents of the park.

8. Compensation where tenant sees to repairs

- (1) It is a term of a long-stay agreement that the park operator must compensate the long-stay tenant for any reasonable expense incurred by the tenant in making urgent repairs to the agreed premises where —
- (a) the state of disrepair has arisen otherwise than as a result of a breach of the long-stay agreement by the tenant and is likely to cause injury to person or property or undue inconvenience to the tenant; and
 - (b) the tenant has made a reasonable attempt to give to the park operator notice of the state of disrepair and of his or her intention to incur expense in repairing the premises.

- (2) However, the park operator is not obliged to compensate the long-stay tenant unless —
- (a) the person who carries out the repairs holds a licence to do such work, if a written law requires the person to hold the licence; and
 - (b) the tenant has given to the park operator a report prepared by the repairer as to the apparent cause of the state of disrepair.
- (3) Subclause (1) applies whether or not the long-stay tenant has notice of the state of the agreed premises at the time when the long-stay agreement is made.

Division 4 — Children

9. Permitting children to live on agreed premises

A long-stay agreement may include a term to the effect that children are not permitted to live on the agreed premises if —

- (a) where the residential park is operated under a licence under the *Caravan Parks and Camping Grounds Act 1995* — the licence permits the park operator to include such a term in the agreement; or
- (b) in any other case — the residential park is a lifestyle village, and the same term is included in all long-stay agreements made between the park operator and the tenants of the lifestyle village.

Division 5 — Other terms

10. Tenant's conduct on premises

It is a term of a long-stay agreement that the long-stay tenant —

- (a) must not cause or permit a nuisance anywhere in the residential park; and
- (b) must not use the agreed premises or the shared premises, or cause or permit them to be used, for an illegal purpose.

11. Quiet enjoyment

It is a term of a long-stay agreement —

- (a) that the long-stay tenant has a right to quiet enjoyment of the agreed premises without interruption by the park operator or any person claiming by, through or under the park operator or having superior title to that of the park operator;
- (b) that the park operator must not cause or permit any interference with the reasonable peace, comfort or privacy of the long-stay tenant in the use by the long-stay tenant of the agreed premises or the reasonable use by the long-stay tenant of the shared premises; and
- (c) that the park operator must take all reasonable steps to enforce the obligation of any other tenant of the park operator not to cause or permit any interference with the reasonable peace, comfort or privacy of the long-stay tenant in the use by the long-stay tenant of the agreed premises or the shared premises.

12. Locks

- (1) It is a term of an on-site home agreement that the park operator must provide and maintain such locks or other devices as are necessary to ensure that the on-site home is reasonably secure.
- (2) It is a term of a long-stay agreement that the long-stay tenant will not alter, remove or add any lock or similar device to the agreed premises or the shared premises without the consent of the park operator given at, or immediately before, the time that the alteration, removal or addition is carried out.
- (3) It is a term of a long-stay agreement that the park operator will not alter, remove or add any lock or similar device to the agreed premises or to anything that belongs to the long-stay tenant without the consent of the tenant given at, or immediately before, the time that the alteration, removal or addition is carried out.
- (4) It is a term of a long-stay agreement that the park operator will not alter, remove or add any lock or similar device to the shared premises without first notifying the long-stay tenant and providing the tenant with a means of access to the shared premises.

- (5) A long-stay tenant who breaches the term referred to in subclause (2) without reasonable excuse, in addition to any civil liability that the tenant might incur, commits an offence.

Penalty: a fine of \$20 000.

- (6) A park operator who breaches a term referred to in subclause (3) or (4) without reasonable excuse, in addition to any civil liability that the park operator might incur, commits an offence.

Penalty: a fine of \$20 000.

- (7) If an agent of the park operator, without reasonable excuse, alters, removes or adds a lock or device to the agreed premises or the shared premises without the consent of the long-stay tenant given at or immediately before the time that the alteration, removal or addition is carried out, then the agent, in addition to any civil liability that the agent might incur, commits an offence.

Penalty: a fine of \$20 000.

13. Park operator's right of entry

- (1) It is a term of a long-stay agreement that the park operator may enter the agreed premises and any other premises occupied by the long-stay tenant under the agreement, including any relocatable home or other structure provided by the tenant —
- (a) with the consent of the tenant given at, or immediately before, the time of entry; or
 - (b) at any time in an emergency.
- (2) It is a term of a long-stay agreement that the park operator may enter the agreed premises —
- (a) on giving at least 24 hours' written notice to the long-stay tenant where the park operator requires access to meet the park operator's obligations under this Act or to inspect repairs and maintenance to the site;
 - (b) on a day and at a reasonable time specified in a written notice given to the tenant at least 7 and not more than 14 days in advance, for the purpose of inspecting the premises or for any other purpose;

- (c) at any reasonable time for the purpose of collecting the rent under the agreement, where under the agreement the rent is payable not more frequently than once each week and is to be collected at the premises;
- (d) for the purpose of inspecting the agreed premises, on the occasion of a rent collection referred to in paragraph (c), but not more frequently than once every 4 weeks;
- (e) for the purpose of carrying out or inspecting necessary repairs to or maintenance of the agreed premises, at any reasonable time, after giving the tenant at least 72 hours' notice;
- (f) at any reasonable time and on a reasonable number of occasions during the 21 days before the agreement ends, after giving the tenant reasonable notice, for the purpose of showing the agreed premises to prospective tenants; or
- (g) at any reasonable time and on a reasonable number of occasions, after giving the tenant reasonable notice, for the purpose of showing the agreed premises to prospective purchasers.

14. Tenant's right to remove fixtures or alter premises

- (1) A long-stay agreement may provide that —
 - (a) the long-stay tenant must not affix a fixture or make a renovation or an alteration or addition to the agreed premises; or
 - (b) the long-stay tenant may affix a fixture or make a renovation or an alteration or addition to the agreed premises, but only with the park operator's consent.
- (2) A site-only agreement may provide that —
 - (a) the long-stay tenant must not affix a fixture or make a renovation or an alteration or addition to the exterior of the relocatable home on the site or to the exterior of any other structure on the site that is not part of the agreed premises; or
 - (b) the long-stay tenant may affix a fixture or make a renovation or an alteration or addition to the exterior of the relocatable home on the site or to the exterior of any other structure provided by the tenant that is on the site, but only with the park operator's consent.

- (3) If a long-stay agreement includes the provision described in subclause (1)(b) or (2)(b), it is a term of the agreement that —
- (a) the park operator must not withhold consent unreasonably;
 - (b) at any time while the long-stay tenant's right to occupy the agreed premises continues, the tenant may remove any fixture that he or she has, with the park operator's consent, affixed to the premises, unless the removal of the fixture would cause irreparable damage to the agreed premises; and
 - (c) if the tenant's removal of a fixture causes damage to the agreed premises, the tenant must notify the park operator and, at the option of the park operator, repair the damage or compensate the park operator for any reasonable expenses incurred by the park operator in repairing the damage.

15. Rates, taxes and charges paid by park operator

It is a term of a long-stay agreement that the park operator must bear the cost of all rates, taxes or charges imposed in respect of the agreed premises and the shared premises under any of the following written laws —

- (a) the *Land Tax Act 2002*;
- (b) the *Local Government Act 1995*;
- (c) any written law under which a rate, tax or charge is imposed for "water services", as defined in the *Water Agencies (Powers) Act 1984*, except a charge for water consumed.

16. Provision for assigning or sub-letting the premises

- (1) A long-stay agreement may provide that the long-stay tenant —
- (a) may assign his or her interest under the agreement or sub-let the agreed premises;
 - (b) must not assign his or her interest under the agreement or sub-let the agreed premises; or
 - (c) may assign his or her interest under the agreement or sub-let the agreed premises only with the written consent of the park operator.

- (2) If a long-stay agreement does not include a provision of a kind described in subclause (1), the agreement is taken to include the provision described in subclause (1)(c).
- (3) Where a long-stay agreement includes or is taken to include the provision described in subclause (1)(c), it is a term of the agreement —
 - (a) that the park operator must not unreasonably withhold consent; and
 - (b) that the park operator must not make any charge for giving the consent except for reasonable incidental expenses.
- (4) However, the operation of a provision of a long-stay agreement that purports to permit the assignment of the long-stay tenant's interest under the agreement is subject to the operation of any other written law that prohibits or regulates such an assignment.

17. Tenant's vicarious responsibility for breach of agreement

- (1) It is a term of a long-stay agreement that the long-stay tenant is vicariously responsible for any act or omission of another person who is lawfully on the agreed premises or the shared premises, if the act or omission would have constituted a breach of the agreement if done or omitted by the tenant.
- (2) However, subclause (1) does not extend to a person who is lawfully on the agreed premises or the shared premises but whose authority does not derive from the permission, express or implied, of the long-stay tenant.

18. Accelerated rent and liquidated damages prohibited

- (1) A long-stay agreement is void and of no effect to the extent that it provides that, if the long-stay tenant breaches the agreement, this Act or another written law, the tenant is liable to pay —
 - (a) all or part of the rent remaining payable under the agreement;
 - (b) rent of an increased amount;
 - (c) an amount by way of penalty; or
 - (d) an amount by way of liquidated damages.

- (2) If a long-stay agreement provides that, if the long-stay tenant does not breach the agreement, this Act or another written law, the tenant is or may be granted a reduction in rent, or a rebate, refund or other benefit, then —
- (a) the agreement is taken to have been varied from the commencement of the tenancy; and
 - (b) the tenant is entitled to the reduction, rebate, refund or other benefit in any event.

Schedule 2 — Consequential amendments

[s. 98]

1. *Rates and Charges (Rebates and Deferments) Act 1992* amended

- (1) The amendments in this section are to the *Rates and Charges (Rebates and Deferments) Act 1992*.
- (2) Section 3(1) is amended in the definition of “relevant interest” by deleting “or 29B” and inserting instead —
“ , 29B or 29C ”.
- (3) After section 29B the following section is inserted —

“

29C. Relevant interest — owner-occupier of relocatable home

- (1) In this section —
park operator has the meaning given to that term by the *Residential Parks (Long-stay Tenants) Act 2006*;
relocatable home has the meaning given to that term by the *Residential Parks (Long-stay Tenants) Act 2006*;
residential park has the meaning given to that term by the *Residential Parks (Long-stay Tenants) Act 2006*;
site has the meaning given to that term by the *Residential Parks (Long-stay Tenants) Act 2006*;
site-only agreement has the meaning given to that term by the *Residential Parks (Long-stay Tenants) Act 2006*.
- (2) Where an eligible person who occupies a site on land in a residential park —
 - (a) has entered into a prescribed charge arrangement described in subsection (3) in relation to the land or is taken to have entered into such an arrangement under subsection (4); and

- (b) is and remains liable to pay the prescribed charge as an amount payable under the prescribed charge arrangement,

that person has an interest in the land which is to be taken to be relevant for the purposes of this Act.

- (3) An eligible person enters into a prescribed charge arrangement for the purposes of this section if the person enters into a written contract, agreement, scheme, deed or other written arrangement with a park operator to pay, either directly or indirectly, a prescribed charge on land in a residential park that is a site occupied by the person as an owner-occupier.
- (4) An eligible person is taken to have entered into a prescribed charge arrangement for the purposes of this section if the eligible person —
 - (a) was the spouse or de facto partner of a deceased eligible person who had entered into a prescribed charge arrangement; and
 - (b) was residing with the deceased eligible person at the time of his or her death.
- (5) An eligible person occupies a site as an owner-occupier for the purposes of this section if —
 - (a) the eligible person —
 - (i) is the owner of a relocatable home situated on the site in a residential park; and
 - (ii) has, under the terms of a written site-only agreement and from the date on which an entitlement of that person is registered, an exclusive right to occupy that site for a term of 5 years or longer, or such other term as may be prescribed in place of that term;

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or

(b) the eligible person —

- (i) is the spouse or de facto partner of an eligible person referred to in paragraph (a), or was the spouse or de facto partner of a deceased person who was an eligible person referred to in paragraph (a) at the time of his or her death; and
- (ii) resides with that person or was residing with that deceased person at the time of his or her death.

”.

- (6) Section 33(1a) is amended by deleting “or 29B,” and inserting instead —

“ , 29B or 29C, ”.

- (7) Section 43(1a) is amended by deleting “or 29B.” and inserting instead —

“ , 29B or 29C. ”.

2. *Residential Tenancies Act 1987* amended

- (1) The amendments in this section are to the *Residential Tenancies Act 1987*.

- (2) Section 5(5) is amended by deleting “This” and inserting instead —

“ Subject to subsection (6), this ”.

- (3) After section 5(5) the following is inserted —

“

- (6) This Act does not apply to a site at a residential park, within the meaning of the *Residential Parks (Long-stay Tenants) Act 2006*, other than in relation to a residential tenancy agreement —

- (a) under which a person has a right to occupy such a site; and
 - (b) that is an existing fixed term long-stay agreement made in writing, to which the *Residential Parks (Long-stay Tenants) Act 2006* does not apply in accordance with section 6(4) of that Act.
- (7) Subsection (6) has effect despite section 8(1) of the *Residential Parks (Long-stay Tenants) Act 2006*.”.
- (4) After Schedule 1 clause 3(2)(a) the following paragraph is inserted —
“
 - (aa) money payable to the fund under section 75(3), 92(b) or 94(a) of the *Residential Parks (Long-stay Tenants) Act 2006*;”.
- (5) After Schedule 1 clause 3(3)(a) the following paragraphs are inserted —
“
 - (aa) in payment of any amount required to be paid out of the fund under section 51 of the *Residential Parks (Long-stay Tenants) Act 2006* or under an order under section 76(3) or 77(2) of that Act;
 - (ab) in reimbursement of the costs and expenses incurred for the purposes of the *Residential Parks (Long-stay Tenants) Act 2006* by the bond administrator, bond agents and the Commissioner in carrying out their respective functions;”.
- (6) Schedule 1 clause 3(3)(b) is amended by inserting after “this Act” —
“ or the *Residential Parks (Long-stay Tenants) Act 2006* ”.

Glossary

[s. 3]

1. Terms used

In this Act, unless the contrary intention appears —

abandoned goods means goods that may be treated as abandoned goods under section 48(1);

ADI, which stands for authorised deposit-taking institution, has the meaning given to that term in the Commonwealth *Banking Act 1959* section 5;

ADI account means an account with an ADI;

agreed premises means —

- (a) in relation to an on-site home agreement — the site, the on-site home, any other structures on the site that the long-stay tenant is entitled to use or occupy under the agreement, and any fixtures, fittings or chattels that are provided under the agreement for the exclusive use of the long-stay tenant; and
- (b) in relation to a site-only agreement means the site, any structures on the site that are provided by the park operator and that the long-stay tenant is entitled to use or occupy under the agreement, and any fixtures, fittings or chattels that are provided under the agreement for the exclusive use of the long-stay tenant;

authorised financial institution has the meaning given in the *Residential Tenancies Act 1987* section 92;

bond administrator means the Commissioner as defined in the *Fair Trading Act 2010* section 6;

caravan park means a caravan park (including a lifestyle village) —

- (a) operated or required to be operated under a licence issued under the *Caravan Parks and Camping Grounds Act 1995*;
- (b) operated by a local government under the *Caravan Parks and Camping Grounds Act 1995*; or
- (c) operated by a public sector body;

Commissioner means the person for the time being designated as the Commissioner under section 84;

default notice means a notice under section 39(1)(b) or 40(1), as the case requires;

Department means the department of the Public Service principally assisting in the administration of this Act;

key bond means an amount paid as security bond as mentioned in section 21(2)(b);

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;

long-stay agreement or **agreement** has the meaning given by section 5;

long-stay site, in relation to a residential park, means —

- (a) if the residential park is operated by a person who is licensed under the *Caravan Parks and Camping Grounds Act 1995* — a site that is permitted to be used as a long-stay site under a licence issued under that Act; or
- (b) in any other case — a site that the park operator is willing to rent to a tenant for a fixed term of 3 months or more, whether or not the site is rented for such a term at any particular time, and whether or not the site includes an on-site home;

long-stay tenant or **tenant** means the grantee of a right of occupancy under a long-stay agreement;

make, in relation to a long-stay agreement, includes renew, extend, assign or otherwise transfer the agreement;

notice of termination means a notice to terminate a long-stay agreement given in accordance with this Act;

on-site home, in relation to an on-site home agreement, means the relocatable home provided under the agreement by the park operator;

on-site home agreement means a long-stay agreement under which the long-stay tenant has the right to occupy a relocatable home provided by the park operator;

park operator, in relation to a residential park or caravan park, means the grantor of a right of occupancy under a residential park tenancy agreement, or the grantor's successor where the succession is subject to the interest of the tenant;

park premises, in relation to a residential park, means all or any part of the land and structures within the boundaries of the park, including premises occupied exclusively by the park operator or an agent or employee of the park operator, vacant sites, vacant on-site homes, agreed premises and shared premises;

park rules, in relation to a residential park, means —

- (a) the rules for tenants prepared by the park operator (if any); and
- (b) the rules for tenants prepared by the park liaison committee (if any);

period of notice, in relation to the termination of a long-stay agreement under a notice of termination, means the period beginning on the day on which the notice is given and ending on the specified day;

pet bond means an amount paid as a security bond as mentioned in section 21(2)(c);

public sector body has the meaning given to that term in the *Public Sector Management Act 1994*;

real estate agent means a person who holds or is required to hold a licence under the *Real Estate and Business Agents Act 1978*;

relocatable home means a vehicle, building, tent or other structure that is fitted or designed for use as a residence (whether or not it includes bathroom or toilet facilities) and that is or can be parked, assembled or erected on a site in a residential park;

rent, in relation to a long-stay agreement, means an amount paid or payable under the agreement by the long-stay tenant in respect of the tenancy period or a part of the tenancy period;

Rental Accommodation Account means the Rental Accommodation Account established under the *Residential Tenancies Act 1987* Schedule 1 clause 3;

residential park means a caravan park in which there are long-stay sites;

residential park tenancy agreement means an agreement made between an individual and a park operator under which the park operator for valuable consideration grants to the individual —

- (a) the right to occupy a relocatable home provided by the park operator on a site in the residential park; or
- (b) the right to occupy a relocatable home provided by the individual on a site in the residential park;

retired person has the same meaning as it has in the *Retirement Villages Act 1992* section 3;

security bond means an amount payable by a long-stay tenant as security for the performance of his or her obligations under the long-stay agreement, including any amounts of pet bond or key bond;

selling agency agreement means an agreement between a long-stay tenant and a park operator as mentioned in section 57(1);

shared premises, in relation to a residential park, means —

- (a) the common areas, structures and amenities in the park that the park operator provides for the use of all long-stay tenants or makes accessible to all long-stay tenants; and
- (b) any fixtures, fittings or chattels in or on the common areas or structures;

site, in relation to a residential park, means an area of land in the park that is set aside for the use of one relocatable home, except such an area that is a lot in relation to a survey-strata scheme under the *Strata Titles Act 1985*;

site-only agreement means a long-stay agreement under which the long-stay tenant has the right to occupy a relocatable home provided by the long-stay tenant on a site in the residential park;

specified day means —

- (a) in relation to a notice of termination given under section 39(1)(a) or (b), 40(4), 41(1) or 42(1) — the day specified in the notice as the day on which the park operator requires the long-stay tenant to give vacant possession of the agreed premises to the park operator;
- (b) in relation to a notice of termination given under section 44(1) — the day specified in the notice as the day on

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which the tenant intends to give vacant possession of the agreed premises to the park operator;

- (c) in relation to a notice of termination given under section 45(3) — the day specified in the notice as the day on which the agreement is to be terminated;
- (d) in relation to a default notice given under section 39(1)(b) — the day specified in the notice as the day on which the park operator requires the outstanding amount of rent to be paid; and
- (e) in relation to a default notice given under section 40(1) — the day specified in the notice as the day on or before which the breach must be remedied;

tenancy means a tenancy under a long-stay agreement;

tenancy bond account means —

- (a) in relation to a park operator — an ADI account held under section 22(1)(b); or
- (b) in relation to a real estate agent — a trust account referred to in section 22(2)(a) or (b);

tenancy period, in relation to a long-stay agreement, means the whole period during which the agreement is in force, whether the agreement is for a fixed term or creates a periodic tenancy;

working day means any day except a Saturday, Sunday or public holiday.

[Glossary amended by No. 19 of 2010 s. 51; No. 60 of 2011 s. 107.]

Notes

- ¹ This is a compilation of the *Residential Parks (Long-stay Tenants) Act 2006* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Citation	Number and year	Assent	Commencement
<i>Residential Parks (Long-stay Tenants) Act 2006</i>	32 of 2006	4 Jul 2006	s. 1 and 2: 4 Jul 2006; Act other than s. 1 and 2: 3 Aug 2007 (see s. 2 and <i>Gazette</i> 1 Aug 2007 p. 3835)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 10 Jan 2007 p. 137)
<i>Standardisation of Formatting Act 2010</i> s. 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Residential Tenancies Amendment Act 2011</i> Pt. 5 Div. 5	60 of 2011	14 Dec 2011	1 Jul 2013 (see s. 2(b) and <i>Gazette</i> 3 May 2013 p. 1735)

- ^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Water Services Legislation Amendment and Repeal Act 2012</i> s. 227 ³	25 of 2012	3 Sep 2012	To be proclaimed (see s. 2(b))

- ² Footnote no longer applicable

- ³ On the date as at which this compilation was prepared, the *Water Services Legislation Amendment and Repeal Act 2012* s. 227 had not come into operation. It reads as follows:

227. Residential Parks (Long-stay Tenants) Act 2006 amended

- (1) This section amends the *Residential Parks (Long-stay Tenants) Act 2006*.

(2) Delete Schedule 1 clause 15(c) and insert:

- (c) the *Water Services Act 2012*, except a charge for the volume of water consumed.