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ASSOCIATED RESIDENTIAL

PARKS QUEENSLAND INC

**ARPQ**

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## ISSUES PAPER

### **FURTHER AMENDMENTS RECOMMENDED TO THE MANUFACTURED HOMES (RESIDENTIAL PARKS) ACT 2003**

#### **OBJECTIVE**

It is the objective of this Issues Paper to:

1. Outline the major issues which, in the opinion of ARPQ, should be addressed in the next review of the Manufactured Homes (Residential Parks) Act 2003 (the **Act**) to ensure fairness is restored for the Home Owners covered by the **Act**;
2. To demonstrate where the **Act** no longer takes into account the immense shift where the industry is now dominated by Park Owners who are essentially large corporations, (many ASX listed), and increasingly owned or partly owned by overseas companies and foreign State-owned investment funds.

The prime objective for these corporations investing in Manufactured Home Parks is to participate in this very lucrative industry segment with the opportunity for further increased profits to achieve higher shareholder returns, which can be achieved only at the expense of the elderly Home Owners;

3. To offer specific areas where amendments to the **Act** are necessary to address its deficiencies, inequities and anomalies.

Without addressing this imbalance of power between the corporate owners of the Parks and the consumers (elderly Home Owners) as recommended in this paper, the disadvantages that exist will accelerate to the point where the necessary balance may not be able to be achieved in the future.

#### **CURRENT POSITION**

The manufactured homes industry has made a huge progression from the time when caravan/mixed parks or the earliest Residential Parks were either converted caravans or prefabricated homes constructed off site and “trucked in”, and from when the original version of the **Act** was proclaimed. At that time there was significant concentration on ensuring those old Parks remained viable.

That was a far cry from the current situation. The industry is now populated by large corporations, both ASX listed and overseas owned who do not need the support or benefits currently offered in the **Act**.

This has resulted in an immense shift to a concentration for profit-making to satisfy corporate shareholder returns at the expense of the **Home Owners, whose demographic is in reality, elderly and mostly pensioners or self funded retirees with limited funds. This is a more vulnerable segment of society.**

The intent of the previous round of amendments to the **Act** was admirable and clearly defined as:

- a) to ensure fairness and consumer protections to Home Owners;
- b) to reinforce the provisions of the Act “to protect Home Owners from unfair business practices”.

Unfortunately, for various reasons the reality is those amendments have not fully delivered on that intent and in a small number of cases the situation has worsened.

In essence, the **Act** has not kept up with the shift in the balance of power the supplier now has over the consumer to the detriment of the Home Owners and the community at large, many of whom are looking for alternate accommodation in their twilight years.

It is generally accepted by government that Manufactured Homes in Residential Parks are a “retirement living” option which was demonstrated by the Government’s long held objective to combine the Manufactured Homes Act and the Retirement Villages Act. Unfortunately, there still exists a significant disadvantage for these “retirement living” Home Owners.

It is therefore essential that this review of the Act is thorough and addresses all the issues to ensure that on this occasion equity and fairness is achieved.

## **THE ISSUES**

### **Issues No. 1 – Age Discrimination**

1. Parks are not considered a “retirement living” option under the Manufactured Homes Act and consequently are significantly disadvantaged by the ruling of the Anti-discrimination Commissioner that “over 50s” resorts are unlawful in that they discriminate against the young;
2. There is ongoing difficulty being encountered for the inclusion of Residential Parks in the Property Council of Australia’s “Retirement Living Code of Conduct” thereby inhibiting access to its associated ‘accreditation scheme’.
3. Seniors who pay a premium for the security associated with living in safe community of like-minded/similar aged people, are disadvantaged by some Park Owners who are prepared to sell to anyone.

### **Recommended Action No.1**

1. Legal status of Residential Parks established as “Over 50s” accommodation be formally recognised in the relevant Acts and Regulations as seniors/retirement living;
2. The **Act** be amended so that it is lawful for the Park Owner to discriminate on the basis of age if the discrimination merely limits residence in a seniors/retirement village to older members of the community. This will mirror s26 of the Retirement Villages Act 1999 with minor amendments as follows:

*Despite the Anti-Discrimination Act 1991, it is not unlawful for a ~~scheme operator~~ Park Owner to discriminate on the basis of age if the discrimination merely limits residence in a retirement village to older members of the community and retired persons.*

A further benefit of this amendment will be the reduced number of applications and workload of QCAT who currently must deal with the applications for age exemptions for manufactured home parks.

## **Issues No.2 - Compounding Annual Percentage Rent Increases**

1. Despite some additional protections for Home Owners introduced by the amendments to the **Act**, (which some Park Owners have learned to circumnavigate) we are still faced with an ever-increasing excessive site rents situation and a rapidly looming prospect of rents becoming unaffordable to the mostly pensioners or self-funded retirees with limited funds who are in fact, the current and future Home Owners;
2. Some Park Owners are being increasingly successful in altering Site Agreements to include compounding annual percentage rent increases which is in effect taking advantage of a vulnerable section of the community, as in these cases, the Home Owner is not made aware by the Park Owners of the ramifications of future large increases.

For example 5% per annum increases which are now being seen (example Sugar Coast Village, Urangan) compounds to 27.6% over five years which is 3 times CPI when compared to the CPI compound increase of 9.4% over the last 5 years.

3. The compounding annual percentage increases result in Home Owners having the burden of rent increases far in excess of residents in the general community;

## **Recommended Action No.2**

That both s25B of the **Act** and the Manufactured Homes (Residential Parks) Regulation 2017 (the **Regulation**) be amended to include the prohibition of unjustified compounding annual rent increases.

## **Issues No.3 – Basis of Rent Increase**

Despite the provisions of Section s69B of the **Act**, Park Owners continue to use more than one basis at a time for calculating site rent increase. The definition of “basis” in the Dictionary of the **Act** is not sufficiently detailed.

## **Recommended Action No.3**

1. Schedule 2 – Dictionary of the **Act** be amended so that the “basis” clearly identifies the differing specific reasons for rent increase;
2. Penalties be included in s69B(1) and (2);
3. The Regulation be amended to include the prohibition of the use of more than one basis for increasing rent as stated in s69B(1) of the **Act**.

## **Issues No.4 - Market Review Rent Increases**

1. Market reviews by Valuers appointed by Park Owners have often been proven to be problematic for reasons which include:
  - a. A perception (most likely valid) that some Valuers have a propensity to arrive at the highest increase within a range of comparisons;
  - b. Rent increases being reduced when appealed to QCAT for reasons including errors in valuations;
  - c. The comparisons of supposedly similar properties are often flawed due to differing facilities and significant differences in external local community facilities;
  - d. Many of the valuations are for properties in substantially differing localities with very different profiles and community facilities and general residential rents. However, the

requirements of s70(5)(b) are being ignored which results in heavily skewed valuations to higher rents and consequent disputes being brought to QCAT;

2. In general, Park rent increases are consistently higher than residential properties in the same localities;
3. The vulnerable section of the community who live in Manufactured Homes Parks are disadvantaged by higher rent increases compared to the same cohort living in the general community and those living in Retirement Villages under the Retirement Villages Act;
4. When an increase in rent is successfully challenged at the Tribunal, in some cases Park Owners take up to 4 months to reimburse the Home Owners.

#### **Recommended Action No.4**

1. An independent study be undertaken to arrive at the most equitable and fair method for calculation of rent increases which eliminates the disadvantage that Home Owners experience compared to both the community at large in their locality and the residents of Retirement Villages;
2. Establishment of an independent tribunal to which Home Owners can appeal when faced with an increase, even if that increase is fully in accordance with their Site Agreement, and make the path to that tribunal simple and more cost effective (refer also Recommended Action 6(1));
3. Amend the **Act** and/or the **Regulation** to allow for the results of 1 and 2 above;
4. Prohibit compounding annual rent increases as per Recommended Action 2 above;
5. Amend the Regulation to include a maximum increase in rent as a result of market review. That maximum can be set as a calculation of a combination of the CPI and residential rents in the same locality and any other criteria considered appropriate;
6. Amend s70(4) to include a requirement that the Park Owner must refund any amount determined by the Tribunal according to s70(4)(a) or (b) within 14 days of the determination.

#### **Issues No.5 – QCAT Rent Disputes**

ARPQ's opinion is that the whole site rent increase situation is out of control and urgent action needs to be taken to protect Homes Owners, many of whom are in a vulnerable situation.

#### **Recommended Action No.5**

This Recommendation is a precursor to the following Recommendation 6

1. An assessment of all rent associated applications to the QCAT should be undertaken to identify the common reasons for rent disputes;
2. ARPQ to undertake a survey (using Building Consumer Confidence (Right Where You Live) Funding) of its Home Owner Committee members and its individual members to collate details of as many as possible rent disputes occurring;
3. The rent dispute data be collated to find areas of commonality of disputes;
4. The **Act** be then amended and strengthened to minimise future rent disputes found in investigations

## **Issues No.6 – Dispute Resolution**

1. There is a significant power imbalance in the dispute process which must be addressed. Disputes are in fact a vulnerable section of the community on one hand, coming up against large corporations (in some cases foreign sovereign fund shareholders) with strong legal representation whose primary objective is the return to shareholders rather than the welfare of the Home Owners;
2. Dispute Resolution process contained in Part 17 of the **Act** involving negotiation and mediation is simply not working, and this is to the disadvantage of Home Owners;
3. Some Park Owners are continuing to not respond to complaints from Home Owners. In this way Park Owners avoid the complaint from becoming disputes, despite the requirement to do so within 21 days as outlined in Part 16 of the Act;
4. Some Park Owners are not responding to the Form 11 and refusing to engage in any meaningful negotiation, thereby forcing the Home Owner to take the dispute to a QCAT hearing;
5. In numerous cases the Home Owners are overwhelmed by the dispute process requirements and are unwilling or unable to proceed to a QCAT hearing;
6. QCAT is charging Home Owners fees at the mediation stage and then again at the full hearing stage if mediation is unsuccessful. This also deters many Home Owners from pursuing the dispute as the all up cost including postage, photocopying and possibly printing, of over \$700 can be unaffordable for some pensioner Home Owners;
7. Some QCAT staff and tribunal members appear unqualified to handle matters associated with provisions of the **Act** or do not fully understand the **Act**;
8. QCAT delays are significant as noted in their last Annual Report:  

*[“Wait time-to-hearing and failure to meet benchmarks remains an issue in South East Queensland. The time-to-hearing benchmarks in other categories of MCDs continue to be exceeded, in some cases significantly”](#)*.
9. These delays result in the increasing adverse mental health effect on the elderly Home Owners to the point where they feel unable to continue the dispute resulting in withdrawal of the dispute, to the benefit of Park Owners;
10. The result is that the intention of amendments to the **Act** for a simpler and cheaper process for Home Owners to resolve disputes with Park Owners has failed and has effectively become more complicated, overly expensive, more traumatic and out of reach of many Home Owners;
11. On occasions the Park Owner has entered mediation for a rent increase dispute accompanied by a lawyer (without notice to the Home Owner). This is likely, or even designed to, intimidate the average Home Owner. In fact, this feeling of intimidation has been reported to us. This also defeats the intent of amendments to the **Act** for a simpler and cheaper process using an experienced mediator;
12. It is neither fair nor reasonable that the fee for handling Home Owner and “Other Minor Disputes” is in the top bracket of fees charged, keeping in mind that it is the lower income or pensioner population applying for dispute resolution. In particular, it is neither fair nor reasonable nor equitable that if mediation is unsuccessful a “new” case and another fee is required to continue with the same dispute.

### **Recommended Action No.6**

1. An alternative independent tribunal be established solely for resolving disputes arising from both the Manufactured Homes Act 2003 and the Retirement Villages Act 1999;
2. That s116(3)(a) be amended to include *“or if both parties agree not to proceed with mediation and apply directly for a tribunal hearing”*;
3. That there be only one fee for a dispute and this fee include both the mediation and the application to the tribunal and fee be set at the low end of the scale to take into account the demographic of the applicants;
4. That s109 be amended so that at a mediation conference for the purpose of a rent dispute, the attendance of legal or other professional representation by one party be permitted only if the other party has received 14 days prior notice of that representation;
5. Significant penalties should be included in the **Act** for non-compliance with the Dispute Resolution process by the Park Owners to deter the use of their power imbalance over the Home Owners. Unless these penalties are significant and they are enforced, the Corporate Park Owners simply consider the minor penalties as a cost of doing business.

### **Issues No.7 – Parties to Dispute Resolution**

1. s70 of the **Act** refers only to the Home Owner(s) being part of the dispute resolution;
2. s141(2) states that members of a group of Home Owners may jointly undertake a dispute;
3. It is not clear whether the “group of Home Owners” also allow for the Home Owners Committee (usually a separate and likely, an incorporated entity) to undertake a dispute.

### **Recommended Action No.7**

That for clarity s141(2) include a Home Owners committee (HOC).

### **Issues No.8- Interested Entities**

1. s69D requires that there be consultations with the registered valuer and “interested entities” when the Park Owner is to undertake a market valuation for a rent increase. The only “interested entity” listed in the **Act** is the Home Owners Committee (**HOC**);
2. **HOCs** can be inadequate or ineffective, do not necessarily represent the interests of all Home Owners, and some Home Owners are not members of the **HOC**, and in some cases **HOCs** are not truly independent of the Park Owner;
3. There are cases where the **HOC** has not, or has not adequately consulted with Home Owners to the disadvantage of Home Owners;
4. This has resulted in cases of Home Owners not having any detail of the proposed valuation process.

### **Recommended Action No.8**

That the **Act** be amended to include in s69D(3) “all interested Home Owners” in the meaning of “interested entities”.

## **Issues No. 9 - "Pre-loved" house sales**

1. The process for "Pre-loved" house sales is not adequately addressed in the **Act** (other than for the Site Agreement);
2. Park Owners have a virtual monopoly of the sales of "pre loved" homes and are not accountable for their actions or non-actions. Park Owners are taking advantage to the detriment of the Home Owners who are placed in subordinate and disadvantaged position for no other reason than for the Park Owner to receive a financial benefit to the detriment of the Home Owner. **If this was occurring in Consumer Law there would be uproar and immediate remedies put in place;**
3. Neither the **Act** nor the **Regulation** specifically prohibits the Park Owner to demand exclusive agreements other than stating in s62(b) of the **Act** that a selling fee can be demanded only if "*the Park Owner is the effective cause of the sale*";
4. Some Park Owners are forcing sellers to sign exclusive agreements (over and above the Form 9) in the knowledge that no action will be taken against them;
5. A lack of effort/interest by Park Owners in selling "pre-loved homes" is wide-spread where the Park Owners are concentrating on selling only their own new homes for 2 reasons:
  - a. there is no incentive to market and promote existing homes when the profit is only around 2.5 to 3.0% commission compared to up to 100% on their own new homes;
  - b. it is in the best interest of Park Owners in many cases to market their own homes instead of the existing "pre-loved homes" while the site rent must continue to be paid even if the home is empty or the occupants have died;
6. Considerable obstacles are put in place by many Park Owners when Home Owners appoint an outside agent to sell their home knowing that no action will be taken against them and these include Park Owners:
  - a. not allowing real estate agents with prospective purchasers access to the homes or;
  - b. placing any possible obstacle in place to make it difficult for real estate agents to effectively market or access the home;
  - c. delaying, being obstructive or simply not proceeding with the assignment of the Site Agreement.

This results in real estate agents being unwilling to list homes in manufactured home parks as it is simply too difficult for them to market and complete the sale of a home;
7. These obstructionist practices by Park Owners has resulted in the removal of competition, with the Park Owners now dictating the conditions for their own self-interest and against the interest of the Home Owners. This is now occurring to the point where most of the Home Owners in Brisbane (and most other localities) are unable to receive any interest from real estate agents to list their homes;
8. **In reality, there is only one amendment to the Act possible to remove the untenable dominant position which the Park Owner has over the Home Owner and this is made in Recommended Action 9(1) below**
9. The refusal by many Park Owners to assign an existing Site Agreement (at an existing Site Rent) to the buyer of a "pre-loved" home and instead, insisting that they sign a new agreement with increased rent contrary to the provisions of s42 and s43 of the **Act** in the full knowledge that no action will be taken against them even though they are aware they are contravening the Act;
10. This insistence by the Park Owner for a new Site Agreement is leading to the significant rent increases by including compounding annual percentage rent increases as noted in Issues No.2 and Recommended Action No.2.

### **Recommended Action No.9**

A review of this section of the **Act** is essential in order to elevate the Home Owner from a position of total disadvantage as an individual competing against a dominant corporation, which is currently the case. This issue should be considered in a similar way to past eras where consumers were dominated by providers and which led to the need for the various Consumer Laws.

1. That the **Act** be amended to include the addition of s59 in that sales of existing homes will fall under the requirements of the Property Agents and Motor Dealers Act 2000, so ensuring that only licenced real estate agents (or the Park Owner only with the approval of the Home Owner) are permitted to market and complete the sale of the homes. In this way the **Act** will inherit the Objects of the Property Agents and Motor Dealers Act 2000 as stated in s10(1) of that Act:

*“an appropriate balance between—*

*(a) the need to regulate for the protection of consumers; and*

*(b) the need to promote freedom of enterprise in the market*

*(b) place.*

and, in s10(3) of that Act :

*(b) providing—*

*(i) protection for consumers in their dealings with licensees and their employees; and*

*(ii) a legislative framework within which persons performing activities for licensees may lawfully operate”*

2. In order to reinforce s42 and s43 of the **Act** regarding the assignment of site agreements that the **Regulation** be amended to prohibit the activity of Park Owners insisting on new site agreements unless s34(2) of the **Act** applies;
3. The **Regulation** be amended such that the Park Owner can not inhibit or obstruct the appointment or activity of a licenced real estate agent;
4. The **Regulation** be amended to specifically prohibit the Park Owner to demand an exclusive agreement for the sale of an existing home;
5. That there be a mechanism whereby penalties can be easily enforced as currently the **Act** and the **Regulation** have no teeth and penalties are rarely if ever applied resulting in the Park Owners knowing they have virtually “open slather” to do as they wish.

### **Issue No.10 – Rent Increase to remain Commercially Viable**

s71D(b) is a criteria for tribunal to confirm the proposed rent increase if otherwise the park will not be “commercially viable”. Consequently, in order for the Home Owners to make an informed decision whether or not to raise the dispute in the first place, the Home Owners must be informed that the viability is in question and be presented with the full financial statements for the period before the increase and the effect of that increase. After all, Park Owners are making commercial decisions and the risks should not unnecessarily be passed on the Home Owners.

### **Recommended Action No.10**

s71(1)(b) of the **Act** be amended to include the provision that if the special cost is necessary for the park to remain economically viable then the Park Owner shall provide residents fully detailed

financial analyses to justify the special cost in order that Home Owners can make informed decisions.

### **Issue No.11 – Home Owners Committees**

1. s100 states only that Home Owners “may” establish a Home Owners committee (**HOC**) and gives little guidance on how it should be established or operate;
2. Consequently, there have been cases where **HOCs**, are ineffective, do not necessarily represent all the Home Owners, are aligned too closely with the Park Owner and are not communicating effectively to Home Owners, particularly regarding rent increases;
3. In many instances because of the demographic of Home Owners , there may be an over reliance by Home Owners on the **HOCs** to perform effectively.

### **Recommended Action No.11**

1. s101(1) be amended to state that a **HOC** must (not may as stated currently) adopt a Constitution;
2. s101(2) be amended to include that the constitution must not be inconsistent with the Associations Incorporation Act 1981;
3. s101(2) be amended to state that although not compulsory, it is recommended that the **HOC** be incorporated.

### **Issue No.12 – Outstanding Reform Issue**

The Public Works and Utilities Committee in its final report to parliament dated September 2019 recommended (No 9) that “*the Minister expand the actions in the Queensland Housing Strategy 2017-2020 Action Plan to include land rent arrangements, such as the arrangements that apply in Residential Parks that include Manufactured Homes, as planned reform of the Housing Act 2003 and the Residential Tenancies and Rooming Accommodation Act 2008 to create a more contemporary legislative framework*”.

This recommendation was not adopted by Parliament

### **Recommended Action No.12**

That this outstanding issue again be addressed to provide land lease arrangements more in line with those that exist in the commercial sector.