



Right where you live

Better rights for home owners in residential parks

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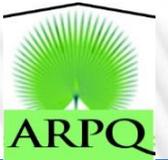


Queensland
Government

About Us, or
‘Caught in the Act’

ASSOCIATED RESIDENTIAL PARKS QUEENSLAND
INCORPORATED

CONTEXT – OBJECTS OF THE ACT



- ✘ As stated, the *main* object of the Manufactured Homes (Residential Parks) Act (the *Act*) is to regulate, and promote fair trading practices in Residential Parks—
 - to protect Home Owners from unfair business practices; and
 - to enable Home Owners, and prospective home owners, to make informed choices by being fully aware of their rights and responsibilities in their relationship with Park Owners.
- ✘ However it also states that the following are *important* objects of this Act—
 - encouraging the continued growth and viability of the Residential Park industry in the State;
 - providing a clear regulatory framework to ensure certainty for the Residential Park industry in planning for future expansion.
- ✘ Consequently, it can be reasonably presumed that the *main* object relating to protections for Home Owners, takes priority/precedence over one that is just considered *important* (but not the main) relating to the interests of Park Owners and financial viability of Residential Parks.
- ✘ We need to ask ourselves if that is the reality of the situation? If not, what is?

CONTENTS OF PRESENTATION



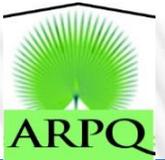
1. Who we are
2. What we do
3. Recent Developments
4. Current Situation
5. Behavioural Standards
6. Park Rules
7. Prohibited Special Terms
8. Varying Site Rent
9. Dispute Resolution
10. Home Owners' Committees
11. Selling a Manufactured Home
12. Challenges
13. The Way Forward
14. In Conclusion

WHO ARE WE



- ✘ We are the peak organisation in Queensland representing Manufactured Home Owners in Residential and Mixed Parks;
- ✘ We strive to bring a balance of fairness between Park Owners and Home Owners under the *Manufactured Homes (Residential Parks) Act* (the **Act**);
- ✘ With the exception of the recent modest government grant, ARPQ is a non-profit member funded volunteer organisation;
- ✘ We are managed by a Management Committee of up to nine volunteers elected annually;
- ✘ In addition to the main Management Committee, we have a Home Owners' Advocacy sub-committee;
- ✘ We are currently establishing co-ordinators to assist with the communication/co-ordination tasks in regional areas of Queensland;

WHAT WE DO



Under our Constitution, our objectives are to;

- ✘ Establish the rights and obligations of Home Owners;
- ✘ Provide advice to current and prospective Home Owners on such rights and obligations;
- ✘ Keep abreast of relevant legislative changes and keep members informed of the consequence of such changes;
- ✘ Provide advocacy and other support for members in their dealings with Park Owners and Government agencies;
- ✘ Lobby Governments and other institutions for the betterment of members;
- ✘ Network with other retiree groups with a view to improving influence at a political level.

RECENT DEVELOPMENTS



A major effort over recent years, has been on the amendments to the **Act**.

Despite our best efforts, these amendments are not as radical as hoped for. Nevertheless, they are fairly extensive, largely positive and include:

- ✘ A wide range of '**Special Terms**' now prohibited in Site Agreements (from Sep 2017 but retrospective);
- ✘ New behavioural standards for Park Owners, including non-interference with Home Owners' rights, harassment/intimidation & communication (Nov 2017);
- ✘ Restriction on the frequency and type of site rent increases and a requirement for increased transparency (from 31 Oct 2018);
- ✘ A new process for increasing site rent to cover operational, maintenance and capital costs (from 31 Oct 2018 but retrospective);
- ✘ Prior consultation and the use of an independent valuer when carrying out a market review of site rent (from 31 Oct 2018);
- ✘ New dispute resolution process using negotiation & mediation (31 Oct 18);
- ✘ Additional information disclosure and 'cooling off' requirements during the pre-purchase/sale process (from 1 Sept 2019).

CURRENT SITUATION

- ✘ In the Sunday Mail 9 July 17, the Minister said \$1m would be spent over two years to boost peak groups such as ARPQ to ensure **seniors** had a voice;
- ✘ In early 2018 the Queensland Government went ahead with its funding initiative and created the '**right where you live**' Program;



- ✘ Five organisations (including ARPQ) received funding under the program (our funding recently extended to 1 July 2020);
- ✘ QRVPAS/Caxton Legal Centre support the program under separate funding;
- ✘ The overall program covers all living arrangements for seniors, but our objectives are restricted to assisting current and prospective Home Owners to:
 - Understand changes to the **Act**;
 - Build their capacity to represent their own interests in dealings with Park Owners and Park Managers.
- ✘ This briefing is part of an ongoing outreach program aimed at these objectives.

BEHAVIOURAL STANDARDS (1)

New

Park Owners

Park Owners must respect the rights of Home Owner/other residents including.

- ✘ Not interfering with their peace, comfort or privacy;
- ✘ Taking reasonable steps to ensure they do not interfere with the peace, comfort or privacy of others;
- ✘ Using best endeavours to ensure they live in an environment free from harassment and intimidation;
- ✘ Not restricting their right to autonomy and the exercise of self reliance over their personal or financial matters;
- ✘ Providing a complete response to correspondence from a Home Owner, other resident, or their representative within 21 days.

A complete response means a written reply addressing each point raised. A representative means a HOC or someone specifically authorised as such.

BEHAVIOURAL STANDARDS (2)

New

Home Owners

A Home Owner must respect the rights of other residents and persons in the Park, including:

- ✘ Not interfering with their peace, comfort or privacy;
- ✘ Respecting the rights of the Park Owner, or his representative, to work in an environment free from harassment and intimidation;
- ✘ Not acting in a way that adversely affects the occupational health and safety of people working in the Park.

Home Owners must also, as far as is reasonably practicable, ensure that their guests or visitors comply with the above standards.

Park Owners may make rules about the use, enjoyment and management of the Park.

What is permitted

- ✘ Park Rules can **only** be made about:
 - use and operation of the communal facilities;
 - making and abatement of noise;
 - carrying on of sporting and other recreational activities;
 - speed limits and the parking of motor vehicles;
 - disposal of refuse and keeping of pets.

What is not permitted

- ✘ Park Rules **cannot** be made about the use of individual Home Sites, or about Home Owners' behaviour. This includes placing restrictions on visitors.

Changing Park Rules

- ✘ Park Rules may be amended from time to time, but only as long as the process for changing Park Rules as outlined in the **Act** is strictly followed.

PROHIBITED SPECIAL TERMS

- ✘ Under the Manufactured Homes (Residential Parks) Regulation there are now a number of '**Special Terms**' that are prohibited in Site Agreements;
- ✘ This prohibition is retrospective over-riding current Site Agreements, meaning if such terms are included they are no longer valid;
- ✘ **Some** of the special terms that are now prohibited are:
 - Calculating site rent in a confusing or misleading way;
 - Stating that the site rent cannot be reduced under any circumstances;
 - Requiring Home Owners to appoint the Park owner as their legal attorney;
 - Removing the Park Owner's liability for negligence or breach of contract;
 - Stating that the Park owner does not warrant its home sites as suitable for use as a Manufactured Home site;
 - Stating that the Park Owner may exclude a person from the Park without reasonable grounds;
 - Giving the Park Owner first right of refusal to purchase a Manufactured Home.

New

VARYING SITE RENT (1)

In accordance with a Site Agreement (1)

- ✘ Park Owners must ensure Site Agreements clearly state the basis for working out increases in Site Rent. Examples of these bases include:
 - A percentage of the current Site Rent worked out by reference to the Consumer Price Index (CPI);
 - A Market Review of Site Rent.

New

*(NB: the **Act** is silent on whether straight % increases are allowed but we have been informed they are permitted)*

- ✘ The Park Owner must not work out an increase using more than one basis at one time and must nominate the same day (the *General Increase Day*) from when the new Site Rent is payable for all sites in the Park;
- ✘ This is achieved by the Park Owner issuing a *General Increase Notice* (Form 12) to all Home Owners stating:
 - The amount of the proposed increase and how it has been worked out;
 - The general increase day and the date the notice was issued.

VARYING SITE RENT (2)

In accordance with a Site Agreement (2) – Market Review

New

- ✘ If a Market Review is proposed, at least 63 days before the general increase day, the Park Owner must consult with the Home Owners' Committee (HOC) on preparation of a market valuation for the Park;
- ✘ The increase notice must be accompanied by a market valuation prepared by a registered independent valuer (at Park Owner's expense);
- ✘ If a Home Owner (or group of Home Owners) dispute the amount of the proposed increase on the grounds that it is excessive, a Residential Park Dispute can be initiated by giving the Park Owner a *Dispute Negotiation Notice* within 28 days of receiving the *General Increase Notice*;
- ✘ If they do not, they are taken to have agreed to the increase;
- ✘ If the dispute proceeds to QCAT, they may order a further valuation by a registered independent valuer (at Park Owner's expense).

VARYING SITE RENT (3)

Varying Site Rent outside of the Site Agreement to cover Special Costs

- ✘ Special Costs are those incurred by the Park Owner relating to operational matters, repairs and upgrades;
- ✘ The new provisions of the **Act** relating to these costs apply, even if an existing Site Agreement currently provides for an increase to cover them;
- ✘ At least two months prior to the increase day, the park Owner must issue a *Special Increase Notice* (Form 13) to all Home Owners stating:
 - The type and amount of the cost and how it has/is to be incurred;
 - The amount of the proposed increase, how it has been worked out, and for a repair or upgrade the period for which the increase will be payable.
- ✘ Within 28 days of receiving the notice a Home Owner must agree to the proposed increase. If they do not they are taken to have disputed it;
- ✘ For upgrades, the increase must be agreed to by 75% of Home Owners;
- ✘ Where the increase is disputed, a Park Owner can refer the matter to QCAT.

New

DISPUTE RESOLUTION (1)



The **Act** recognises that disputes can arise between Home Owners and Park Owners/Managers (or between individual Home Owners), defines what is a *Residential Park Dispute* and provides a structured process for their resolution.

Step 1 - Reconciliation

- ✘ Complaints are always best resolved by the parties getting together to discuss and resolve the matter before becoming disputes.

Step 2 – Formalisation

- ✘ If reconciliation fails, a written formal complaint can be sent to the Park Owner/Manager in the following form:
 - Complainant name and contact details (individual Home Owner or HOC);
 - The facts of the situation;
 - Which section of the **Act** and/or Site Agreement has been breached;
 - Copies of relevant documents or evidence to support the dispute;
 - A statement that a full and complete response is expected within 21 days in accordance with Section 104(2)(f) of the **Act**.

DISPUTE RESOLUTION (2)

Step 3 - Negotiation

- ✘ If matters remain unresolved, a *Residential Park Dispute* can be initiated with one party giving the other party a *Dispute Negotiation Notice* (Form 11) nominating a time and place where the parties are to meet to negotiate a resolution to the dispute;
- ✘ The parties must meet and try to resolve the dispute by negotiation.

New

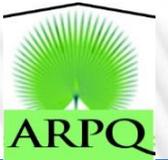
Step 4 - Mediation

- ✘ If a dispute is not resolved via negotiation, either party can apply to QCAT to refer the dispute for independent mediation;
- ✘ Mediation conferences are held in private and if agreement is reached, a *Mediation Agreement* signed by both parties.

Step 4 – Arbitration (QCAT)

- ✘ If a dispute is still not resolved, an application can be made to QCAT;
- ✘ QCAT will hold a hearing(s) where both parties are allowed to state their case before making an order. These orders are binding and enforceable.

HOME OWNER COMMITTEES



- ✘ Home Owners in a Residential Park *may* establish a Home Owners Committee (HOC) to generally represent their interests and deal with the Park Owners on their behalf about:
 - The day to day running of the Park;
 - Any complaint or proposal about the operation of the Park raised by Home Owners.
- ✘ Park Owners cannot interfere with, or be involved in, the establishment and operation of HOCs;
- ✘ Park owners cannot place restrictions on Home Owners participating in a Home Owners organisation, or establishing a HOC. Nor can they restrict the HOC or its members from carrying out their functions.
- ✘ The HOC may adopt a constitution governing the performance of the committee providing it complies with the requirements of the **Act** and any matter prescribed under regulation.

New

SELLING A MANUFACTURED HOME (1)



Transactions Involved

- × Two separate but related transactions are involved:
 1. Sale of the home to the buyer (form of contract not covered by the **Act**);
 2. Assignment to the buyer of the Site Agreement with the Park Owner.

Sellers Choice of Sales Agent

- × Home Owners *may* appoint the Park Owner to act as their agent in selling their home (Form 9), appoint another entity as their agent, or sell their homes privately;
- × The Park Owner must not interfere with the sales process;
- × The Form 9 is non exclusive and Park Owners can only charge a fee for the sale (capped by regulation) if they are directly responsible for it.

Buyers Choice of Site Agreement

- × A buyer can choose whether to take over the existing Site Agreement (at the existing Site Rent), or negotiate a new one with the Park owner.

SELLING A MANUFACTURED HOME (2)



Park Owners (or other agents) will normally handle the paperwork but the following process needs to be followed if selling privately:

New

Notice of Proposed Assignment (Form 7)

- ✘ A Home Owner wishing to sell their home and assign the Site Agreement to a prospective buyer, must complete this form and give it to the Park Owner;
- ✘ Within seven days of receiving this Form 7, the Park Owner must give the buyer the Initial Disclosure Document (Form 1A including details of the Site Rent currently being paid), the Supplementary Disclosure Document (Form 1B) and the Site Agreement (Form 2 including Special Terms and Park Rules).

Form of Assignment (Transfer) (Form 8)

- ✘ Upon confirmation of a buyers interest, two copies of this Form 8, signed by the seller and buyer, must be given to the Park Owner;
- ✘ If consenting to the assignment, the Park Owner must sign both copies, keeping one and returning the other to the seller (a Park Owner must not consent unless the buyer has been given the disclosure documents mentioned above at least 21 days prior to the consent date - can be waived by the buyer).

SELLING A MANUFACTURED HOME (3)



Refusing Assignment/Sale

- ✘ If the Park Owner does not consent to the assignment/sale within 28 days of receiving the Form 8, a Park Owner is taken to have refused it;
- ✘ A Park Owner can only refuse assignment/sale if there are good reasons which must be stated in writing;
- ✘ If a seller is dissatisfied with the reasons for the refusal they can use the dispute resolution process

Termination of Assignment within Cooling Off period (Form 3B)

- ✘ A buyer can terminate an assignment agreement during the cooling off period by signing this Form 3B and giving copies to the seller and Park Owner.

New

Seller to give particular documents to the Buyer

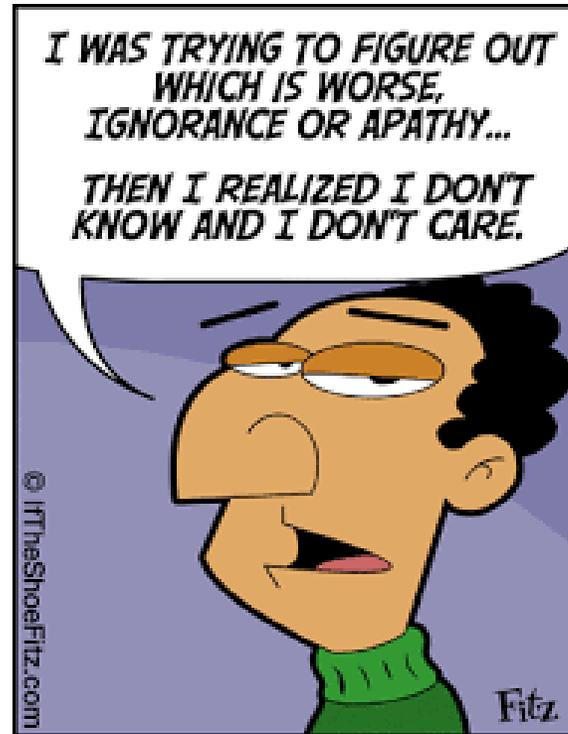
- ✘ As soon as practicable after receiving consent to the assignment a seller must give a buyer:
 1. The copy of the form of assignment;
 2. The seller's copy of the Site agreement.

ISSUES AND CHALLENGES (1)



- ✘ Understandably, when people chose to retire and downsize it is not just about reducing house size or financial burden;
- ✘ They are also looking to minimise complexity, ie they are just looking for a simple life;
- ✘ Consequently, when faced with the complex and unfamiliar legislative framework contained in the **Act** many simply switch off. They just don't want to know;
- ✘ This can lead to many Home Owners being unsure of their rights and obligations under the *Act* making them very vulnerable;
- ✘ Motivating people in this situation to understand and take an interest in their rights, and what they need to do to protect those rights, is the biggest challenge we face.

ISSUES AND CHALLENGES (2)



- ✘ If we do not look after our rights, no one is going to do for us;
- ✘ Complacency is not an option!

THE WAY FORWARD (1)



Despite the widely held views that the recent amendments to the **Act** do not do enough to further Home Owners rights, there is still a lot needs doing to ensure those rights as actually granted are fully understood and protected.

What we need to do:

- ✘ Use '***right where you live***' to enhance networking and improve influence at a Political level (ongoing);
- ✘ Continue to work with and lobby Government on further amendments to the **Act** and other initiatives to improve and protect Home Owners Rights (ramping up this year);
- ✘ Develop a stronger Home Owners representational body by significantly expanding our membership base to match the power of Park Owners (ongoing/pending – 'that's where you come in').

THE WAY FORWARD (2)



Although we are always here to help you, things you can do to help yourself (and us) include:

- ✘ Familiarise yourself with your rights under the *current* version of the **Act** (1 Sept 2019);
- ✘ Visit our website (www.arpq.org.au) to gain insight into these rights;
- ✘ Support and use your Home Owners' Committee. If you do not have one, form one;
- ✘ Be prepared to take action against the Park Owner where necessary to protect your rights;
- ✘ Lobby the State Government on deficiencies in the **Act** (its an election year) and the need for further change;
- ✘ Join ARPQ in promoting and protecting your interests. Persuade others to do the same.

IN CONCLUSION

If you live in an "Over 50's" Resort...

ASSOCIATED RESIDENTIAL  PARKS QUEENSLAND INC.
ABN: 24 350 567 567

Home Owners Advisory and Advocacy Service



YOU NEED US!

- Empty Nesters?
- Downsizing?
- Considering moving into a Lifestyle village (Manufactured Home Park)
- Having Problems or concerns with Park owners/management?

Protect your lifestyle and rights!
Member benefits include advocacy with Government Departments and village owners/managers
Membership from \$15 per annum

ARPQ—Associated Residential Parks Queensland
Your Voice
Your Rights
a non-profit volunteer incorporated Association

Webpage: arpq.org.au - **Phone:** (07) 3040 2344 - **email:** membership@arpq.org.au

✘ Together we **can** achieve something.

THANK YOU



Right where you live

Better rights for home owners in residential parks

Any questions?

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